STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	
Investigation concerning Illinois Bell	:	**Docket No. 01-0662**
Telephone Company's compliance	:	
with Section 271 of the	:	
Telecommunications Act of 1996	:	

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	:	
Investigation concerning Illinois Bell Telephone Company's compliance with Section 271 of the Telecommunications Act of 1996	:	**Docket No. 01-0662**

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission respectfully submits this its reply brief in this proceeding.

I. INTRODUCTION

Although the main purpose of this brief is to respond to the legal and factual arguments of Ameritech, the Commission should remain focused on the recommendations by Staff and other parties setting forth the further actions Ameritech must take to comply with Section 271. In its Initiating Order, this Commission found "that Ameritech Illinois' compliance with the Checklist Items is crucial to ensuring that Ameritech Illinois' local markets are open to effective competition, and conclude[d] that a determination of whether Ameritech Illinois satisfies those items or requires further action to satisfy those items must be investigated." Initiating Order at 3. The Commission went on to assure all parties that it "will work with Ameritech Illinois, the CLECs, Staff and other interested parties to bring about any necessary changes or improvements." Id. The Commission thus recognized the paramount importance of effectuating those changes necessary to

comply with Section 271 and to ensure that Ameritech's local markets are open to effective competition.

Although Staff's recommendations regarding necessary remedial actions have not changed substantially over the course of this proceeding, there have been some modifications to those recommendations as explained in Staff's initial brief and this reply brief. So as to give the Commission a current summary of Staff's recommendations, Staff has prepared an Updated Summary of Staff's Proposed Remedial Actions For Ameritech Illinois that is attached hereto as Appendix A. Staff strongly urges the Commission to adopt those recommendations so as to give Ameritech a clear indication of what it must do to obtain a positive Section 271 recommendation, and to further this Commission's efforts to bring the benefits of competition to Illinois consumers by ensuring that Ameritech's local markets are open to effective competition.

II. BURDEN OF PROOF

Ameritech asserts that:

> [t]here is no real dispute that Ameritech Illinois has a concrete and binding legal obligation (in the form of Commission-approved interconnection agreements and effective tariffs) to furnish the numerous wholesale products and services encompassed within the 14-point competitive checklist of section 271(c)(2)(B).

Ameritech IB at 3.

Ameritech is wrong. Staff has demonstrated that Ameritech has, in many cases, failed to demonstrate that it has submitted itself to any concrete and binding legal obligation to furnish particular products or services within the 14-point competitive checklist, even when the company might voluntarily provide them. Staff IB at 26-36.

Further, Staff, along with other parties, has clearly demonstrated that the evidence in this proceeding indicates that Ameritech does not provide all of the products and services it is required to provide under the 14-point competitive checklist of section 271(c)(2)(B). Thus, Ameritech is simply wrong when it asserts that there is "no dispute" that Ameritech Illinois has a concrete and binding legal obligation (in the form of Commission-approved interconnection agreements and effective tariffs) to furnish the numerous wholesale products and services encompassed within the 14-point competitive checklist of section 271(c)(2)(B).

Staff and Ameritech unquestionably differ on the question of what products and services Ameritech is required to provide under the 14-point competitive checklist of Section 271(c)(2)(B). Ameritech witnesses have stated that consideration of whether Ameritech's offerings are transparent and readily understandable to potential purchasers, and whether Ameritech restricts provision of its products and services to requesting carriers based on the requesting carriers usage, are issues outside the scope of the 14-point competitive checklist. Ameritech Ex. 1.1 (Revised) at 4; Ameritech Ex. 15.0 at 9. Indeed, the company's witnesses have indicated that "separate and different" criteria apply. Ameritech Ex. 1.2 at 6. They contend that:

> Under the FCC's Section 271 orders, an ILEC must demonstrate: (1) that it has a legal obligation to furnish the UNE pursuant to an approved interconnection agreement that sets forth prices, terms and conditions; and (2) that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality.

Ameritech Ex. 1.2 at 6.

Staff's evaluation criteria are neither separate nor different from these criteria unless one takes the erroneous position, as the company apparently does, that UNEs prices, terms, and conditions (the factors that indicate how products and services are offered) are not subject to review.

Further, the company argues:

> …while Staff Witness [Dr.] Zolnierek spends a great deal of time addressing the provision of existing UNE combinations, no CLEC disputes that Ameritech Illinois provides existing combinations.

Ameritech IB at 37.

This implies that, in the company's view, as long as it provides any existing combinations, it complies with its 14-point checklist obligation. However, provisioning of one combination does not imply that the company is providing all existing combinations it is required to provide under the 14-point checklist, nor does it indicate that the combinations Ameritech does in fact provide are provided at rates, terms, and conditions compliant with the 14-point checklist.

The Commission's recent *Section 13-801 Order* underscores the relevance of evaluation criteria used by Staff to evaluate Ameritech's compliance with its 14-point checklist obligations. Staff Ex. 3.0 at 64-69. In that proceeding, Ameritech argued that, while it would provide UNE loop/transport combinations, it had the right to refuse to combine UNE loop/transport combinations when such combinations terminated in places other than a collocation arrangement. The Commission soundly rejected any such requirement, finding that "nothing in Section 13-801 … remotely suggests a collocation requirement for the termination of EELs." Section 13-801 Order, ¶236. Thus, while the company offered to supply some UNE

loop/transport combinations, it imposed limitations on the use of such combinations that the Commission determined are not permissible under Section 13-801 of the PUA.

While the Commission's finding in the example above dealt specifically with state law compliance issues, it is illustrative of why Staff's proposed criteria are properly applied to evaluation of Ameritech's compliance with the specific requirements of the 14-point checklist. In offering the products and services required by the 14-point checklist, Ameritech has applied similar restrictions upon the use of these products that are not compliant with federal law. For example, Ameritech imposes a requirement that CLECs using its dedicated transport offering must terminate such transport at a facility Ameritech considers a wire center, despite the fact that Ameritech itself does not appear to have a very clear idea of what might constitute a CLEC wire center. Ameritech Ex. 1.0 at 16-17; Tr. at 1535 – 1536. As this example demonstrates, Ameritech may refuse to provide carriers dedicated transport if Ameritech does not believe that carrier's facilities qualify as a "wire center", based upon evaluation criteria known only to Ameritech. While Ameritech may provide dedicated transport under some circumstances, the fact that it refuses to provide dedicated transport under other, ill-defined, circumstances is certainly relevant to an analysis of whether Ameritech is providing the dedicated transport UNE in compliance with the 14-point checklist.

In order to support its position, the company cites the FCC, stating:

> …the purpose of a section 271 proceeding is to apply existing federal rules, not to create new rules or litigate 'new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors – disputes that [the FCC's] rules have not

> yet addressed and that do not involve per se violations of self-executing requirements of the Act.' Kansas & Oklahoma 271 Order, ¶ 19.

Ameritech IB at 5. Staff concurs that the FCC has indicated that there are limitations to the issues it will consider. However, Ameritech has taken the FCC's comments as an indication that no issue may be addressed that has not been explicitly addressed in previous 271 proceedings. *See* Ameritech Ex. 1.2 at 7 ("With respect to numerous issues, Dr. Zolnierek has concluded that Ameritech Illinois is not in compliance with the checklist based on these criteria, when, in fact, nothing in the FCC's numerous Section 271 orders to date supports his conclusion.") The Commission should reject this company position because it is not a reasonable interpretation of the FCC's pronouncements. A simple example proves the fallacy of the company's interpretation.

Suppose, for the sake of argument, Ameritech refuses to provide UNE loops to any CLEC with a company name beginning with a vowel. While such action is *implicitly* prohibited by FCC non-discrimination rules, no FCC rule *explicitly* addresses a restriction based on the spelling of a CLEC's name. Under Ameritech's reading of the FCC's Section 271 compliance requirements, expressed by Mr. Alexander, consideration of this restriction would be outside the scope of this proceeding. Although extreme, this example, illustrates the fallacy of the company's position and demonstrates why the Commission must and should examine – in this proceeding – the imposition of usage restrictions like the wire center restriction discussed above. Clearly, assessment of whether the company imposes any improper usage restrictions on its product and service offerings is critical to evaluation of the company's compliance with the 14-point checklist, even under

Ameritech's interpretation of the 14-point checklist requirements. Use of such criteria is neither inconsistent with the requirements of the 14-point checklist, nor of the FCC's prior Section 271 Orders, and use of such criteria does not, as Ameritech asserts, "expand federal requirements." Ameritech IB at 5.

Neither Congress nor the FCC have developed a list of restrictions that Ameritech *cannot* impose when offering the products and services that it is required to provide under the 14-point checklist. As the above example demonstrates, however, the number of possible restrictions Ameritech *can* impose is limitless. Thus, specifically creating rules that explicitly address and prohibit imposition of any conceivable restriction is impossible; the collective corporate imagination of a recalcitrant ILEC could impose numerous such restrictions. This is why Ameritech must offer the products and services that it is required to provide under the 14-point checklist without restriction. To the extent the company does impose restrictions, it is not only proper to address these restrictions under a Section 271 compliance proceeding, but is also necessary to evaluate compliance. By imposing restrictions on the use of the products and services it is required to provide under Section 271 of the Act, Ameritech effectively *limits* the products and services it makes available. Unless the company can show that there is a rule or law *relieving* it of its obligations to provide the relevant UNE or combination when its restrictions are violated, it must be assumed that the company is, by imposing such restrictions, *failing* to comply with its Section 271 requirements by failing to provide the UNE or combination in question. The Commission should reject the company's position that any restriction it imposes on carriers seeking its products or services is compliant with Section 271

absent an explicit prohibition on the restriction. Precisely the opposite is true: *any* restrictions imposed by the company constitute a failure to comply, unless there is an explicit endorsement of the restriction in the 1996 Act or FCC rules.

III. COMPLIANCE WITH STATE LAWS

As an initial matter, the Staff accepts that Ameritech generally dislikes the requirements imposed upon it by Illinois state law. In light of Ameritech's disappointing history in terms of state law compliance, the company undoubtedly prefers that these matters be ignored altogether. The Commission, however, cannot and should not do so.

Ameritech takes a number of unusual positions regarding the Staff's public interest concerns. The company's basic position is founded upon the peculiar assertion that "Staff's attempt to inject state law requirements [into a state administrative proceeding before a state agency] is inappropriate." Ameritech IB at 186. Ameritech contends that its entry into the long distance market would serve the public interest. Id. Ameritech further asserts that the Commission should not consider the company's record of compliance or non-compliance with state law in this proceeding, inasmuch as the Commission has "numerous other mechanisms at hand to assess and enforce compliance with state law, and no one contends that it has not made sufficient use of those means." Ameritech IB at 187. These arguments are all unavailing.

Ameritech's assertion that the Commission ought to wholly dispense with state law issues in this proceeding has numerous defects. First, Ameritech, in its efforts to divert attention from what is, to put it charitably, a checkered history with

respect to state law compliance, ignores the venue in which it makes these arguments. By nothing more complicated than reference to the caption of this proceeding, the company would make the vital discovery that it is appearing before the *Illinois Commerce Commission*, a *state* administrative tribunal charged with enforcing *state* laws and its own orders, many of which are intended to promote local service competition within the framework of the federal Telecommunications Act, and several of which were imposed upon Ameritech[1] based upon the Illinois General Assembly's determination that the company is doing a markedly substandard job in opening its network. *See* Staff IB at 216, *et seq.*; 231-33.

Ameritech appears unable to come to grips with the simple fact that, although the company may fail to comply with state law, the Commission cannot. The Commission is a creature of state statute: it derives its authority from the Public Utilities Act, and orders inconsistent with the Act are void. Continental Mobile Telephone Co. v. ICC, 269 Ill. App. 3d 161, 167; 645 N.E.2d 516 (1st Dist. 1995), *app. den.*, 161 Ill. 2d 524 (1996). This proceeding is a docketed Illinois Commerce Commission proceeding, conducted under the authority of the Public Utilities Act, in addition to federal authority. Ameritech nonetheless urges the Commission to entirely ignore the Public Utilities Act in this proceeding.

Along similar lines, Ameritech argues "Congress did not even authorize this Commission to conduct a public interest inquiry or advise the FCC on that issue."

[1] In fact, the requirements of Section 13-801 of the Public Utilities Act apply to carriers that are subject to alternative regulation under Section 13-506.1. 220 ILCS 5/13-801(a). However, Ameritech is the only such carrier in Illinois, and the remarks of individual members of the General Assembly make it clear that the problems that Section 13-801 was intended to remedy were perceived by the General Assembly to be attributable to Ameritech's conduct. *See* Staff IB at 231-33.

Ameritech IB at 185. Ameritech's contention that anything not explicitly authorized by the 1996 Act is prohibited is disingenuous at best and has been rejected by the courts. *See* Illinois Bell Tel. Co. v. WorldCom Tech., Inc., 179 F.3d 566, 573 (7th Cir. 1999) (noting that simply because "the Act does not *require*" something does not mean "that it *prohibits* it") (italics in original); U.S. West v. Sprint, 275 F.3d 1241, 1249 (10th Cir. 2002) (*citing* Illinois Bell Tel. Co. v. WorldCom Tech., Inc., 179 F.3d 566 (7th Cir. 1999)). What Congress in fact did was require the FCC to consult with this Commission. 47 U.S.C. §271(d)(2)(C). If anything, the statute confers upon this Commission a great deal of latitude regarding what it will report to the FCC in the course of this consultation. The Congress did not set forth what form such consultation shall take at the state level, nor did it limit in any way the inquiry states might elect to make. What is clear from the framework of the federal Telecommunications Act is that Congress intended that ILECs should open their local markets to competitors. This Commission can, must, and should, report to the FCC on whether, and to what extent that this has taken place.

This Commission has long been noted for leading the deregulatory trend in local service. Moreover, this Commission has never hesitated to tell the FCC things that the FCC perhaps does not wish to hear – the issues of area code exhaust and number pooling come to mind in this regard. This is not the time for the Commission to depart from this tradition of squarely facing facts, or to decline to make anything less than a full and complete recommendation to the FCC. The FCC can, if it chooses, ignore such of this Commission's findings and recommendations as it deems proper. However, that is not a remotely compelling argument for not making

such findings and recommendations. This Commission has a unique opportunity to make clear to the FCC the issues that, in its view, must be resolved for robust competition to develop in Illinois. It should take full advantage of the opportunity.

Ameritech's argument that the Commission ought to address the company's regulatory non-compliance outside of – and presumably *after* the completion of – this proceeding is equally dubious. There is quite simply no reason for the Commission to assume that Ameritech will reform its conduct once it has obtained what it seeks. An excellent example of why this is a perilous course is found in Ameritech's compliance – or, in this case, what the Commission characterized as Ameritech's "egregious" *refusal* to comply, *see* TELRIC II Order at 66-67 – with the Commission's *Merger Order*. As noted in the Staff's initial brief, *see* Staff IB at 221, the Commission found, prior to the *Merger Order*, that "**Ameritech Illinois has been quite zealous in resisting the notion of providing common transport[2]**." TELRIC Order at 89 (emphasis added).

Ameritech persisted in this resistance to the provision of shared transport until it found itself needing something that was in the Commission's power to grant or withhold – namely, authority to merge with, or more accurately, be acquired by, SBC. Apparently realizing that the Commission took the shared transport issue seriously, Ameritech made a "voluntary commitment" to provide shared transport on terms and conditions (other than rates) substantially similar to the most favorable such terms offered in Texas by SBC. Merger Order at 176-77. The Commission accepted this "commitment," modifying it – as it was fully authorized to do under

Section 7-204(f) of the Public Utilities Act, 220 ILCS 5/7-204(f) – to the extent of requiring Ameritech to import Texas rates. Merger Order at 183-84; 250-53.

Having obtained the merger authority it sought from the Commission, Ameritech apparently reconsidered its "voluntary commitment." Even though the Commission modified the *Merger Order* to permit Ameritech to import rates for shared transport "reasonably comparable" to Texas rates, *see* Amendatory Merger Order on Rehearing at 8, the company, having received what it sought from the Commission, proposed rates for shared transport in Illinois that were 16 times higher than Texas rates. TELRIC II Order at 65-67. The Commission determined that Ameritech's cost and rate structure in Illinois was "almost identical" to that prevailing in Texas, and that Ameritech therefore had no basis for attempting to impose vastly higher rates. Id. at 67. The Commission therefore found "Ameritech's noncompliance [to be] **even more egregious that just violating the Merger Order**." Id. (emphasis added).

In this proceeding, Ameritech again seeks something that is within the Commission's purview to grant or withhold, namely a favorable recommendation to the FCC regarding the company's Section 271 application. By stating that the Commission should take up state law compliance issues in other, subsequent proceedings, Ameritech implies that it will actually undertake to abide by the results of those proceedings. Since, however, Ameritech has repeatedly failed to undertake such compliance in the past, its argument is essentially that, once it has long

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[2] "Common transport" and "shared transport" are the same thing.

distance authority, it will turn over a new regulatory leaf. The Commission need not, and should not, accept this representation.

As the Staff noted in its initial brief, *see* Staff IB at 231-33, the Illinois General Assembly has entrusted this Commission with new responsibilities and authority in opening local telecommunications markets to competition. Ameritech does not approve of these requirements, and implies that the requirements are preempted by the federal Telecommunications Act. *See* Ameritech IB at 194 ("Putting aside the question whether conflicting requirements of state law like those cited by Staff are even valid, what matters for present purposes is that they are requirements imposed by state law, not federal law and certainly not section 271[3]."") Nonetheless, the General Assembly saw fit to enact the new requirements (largely, as seen above, due to the General Assembly's perception, as evidenced by statements of its members, that Ameritech has failed to open its network to competitors) and the Commission is charged with enforcing them. It would be remarkable indeed if the General Assembly, having enacted a new law intended to foster competition, and having charged the Commission with its implementation and enforcement, would desire the Commission to remain silent to federal regulators regarding whether it was being complied with.

[3] Ameritech is authorized to petition the FCC under Section 253(d) of the Telecommunications Act of 1996, to preempt Section 13-801, on the grounds that it, or some portion of it, violates, or is inconsistent with, the federal Act. 47 USC §253(d). Despite the Company's protestations in various proceedings that some or all of Section 13-801 is preempted, it has, to date, declined to seek such a finding.

IV. COMPLIANCE WITH STATE LAW TARIFFING REQUIREMENTS

In arguments similar to those it advances with respect to state law compliance, Ameritech asserts that the Commission cannot require the company to comply with its existing state law obligation to tariff all its wholesale services as a condition to obtaining a favorable Section 271 recommendation. Ameritech IB at 187, *et seq*. As it does with its other state law obligations, Ameritech assures the Commission that – while the company is, by its own admission, not in compliance with such obligations, Ameritech Ex. 15.0 at 28 – it will come into compliance with this obligation "the next time that these [wholesale] tariffs are updated on an across-the-board basis[,]" Id. at 29, whenever that might be. Again, Ameritech urges the Commission to grant it a favorable Section 271 recommendation despite its failure – which by now must be deemed to have ripened into refusal – to comply with a law the Commission enforces.

As an initial matter, state statute clearly requires Ameritech to file tariffs for all telecommunications services it offers in Illinois. Section 13-501(a) of the PUA provides that:

> **No telecommunications carrier shall offer or provide telecommunications service unless and until a tariff is filed with the Commission** which describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange, exchanges or other geographical area or areas in which the service shall be offered or provided. The Commission may prescribe the form of such tariff and any additional data or information which shall be included therein.
>
> 220 ILCS 5/13-501(a) (emphasis added)

"Telecommunications service" is defined as:

> the provision or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of information, by means of electromagnetic,

> including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission and **includes access and interconnection arrangements and services**.
>
> 220 ILCS 5/13-203 (emphasis added)

Accordingly, the requirement that Ameritech tariff its wholesale services is not, as Ameritech attempts to suggest, a "policy preference" of the Staff, Ameritech IB at 190; instead, it is a "policy preference" of the *General Assembly*, which is more usually described by its proper term, a "state law." Ameritech's attempts to characterize it as anything else are utterly disingenuous.

Ameritech further argues that Congress and the FCC have rejected a tariffing requirement within the framework of Section 271, and this Commission should do likewise. Ameritech IB at 187. It is far from clear that Congress has done any such thing. Congress was fully aware, when it passed TA 96, that state regulation predated the Act, and that both state and federal regulators have long had (and were fully expected to continue to have) tariffs. *See* 47 U.S.C. §§251(d); 261(b). Congress was fully aware that tariffs are the primary means of state regulation. Hence, there was no need to discuss this at all in the Act.

While the FCC has indicated that it is prepared to grant Section 271 relief in the absence of state tariffs, it is not clear from Ameritech' presentation, *see* Ameritech IB at 187, *et seq*., that any of the states in which this occurred have a requirement that ILECs tariff wholesale offerings. There, as a melancholy and fictional Danish prince would note, is the rub. Illinois does in fact have such a

requirement, and Ameritech is violating it today. Moreover, the company appears to view this as a minor matter, to be attended to when convenient.

Ameritech asserts that courts have found tariffing requirements to be fundamentally inconsistent with and preempted by the federal Telecommunications Act. Ameritech IB at 188, n. 50. The federal court that spoke to this issue most recently, however, said exactly the opposite. In US West v. Sprint, the Court of Appeals for the Tenth Circuit recently upheld a Colorado Public Service decision that permitted a carrier to "opt in" to tariffed interconnection provisions. US West v. Sprint, 275 F.3d 1241, 1250-52 (10th Cir. 2002). Moreover, both of the cases referred to by Ameritech specifically upheld the existence of state tariff requirements, provided that these do not displace interconnection agreements. *See* MCI Telecommunications Corp. v. GTE Northwest, Inc., 41 F. Supp. 2d 1157 (D. Ore. 1999); Michigan Bell Telephone Co. v. Strand, 26 F. Supp. 2d 993 (W.D. Mich. 1998) (both cases uphold state tariffing requirements provided that such requirements do not entirely displace interconnection agreements).

Ameritech contends that Staff witness Jeffrey Hoagg "acknowledged that it is appropriate and *necessary* for carriers to go "off tariff" as federal law contemplates. Staff's witness went on to explain that these "off tariff" arrangements would be consistent with the PUA **for wholesale offerings, but only for wholesale offerings**[.]" Ameritech IB at 189 (emphasis added). Mr. Hoagg acknowledged no such thing, as Ameritech is perfectly aware. Ameritech and Mr. Hoagg both know that Ameritech and other carriers go "off- tariff" regularly in retail offerings. These arrangements are individual contracts, often known as individual case based-pricing

or ICBs. Going "off tariff" in interconnection agreements (wholesale) and ICBs (retail) is totally consistent with the PUA tariffing requirements. *See* 220 ILCS 5/13-509 (permits carriers providing competitive telecommunications services to contract with customers to provide such services at rates other than those tariffed).

Ameritech further argues that Mr. Hoagg conceded that there is no Public Utilities Act requirement that Ameritech tariff wholesale services. *See* Ameritech IB at 189-91 (The company asserts that Mr. Hoagg stated that there is "no basis in state law for requiring wholesale tariffs"). However, Ameritech's assertion, as well as being quite irrelevant, inaccurately characterizes Mr. Hoagg's testimony. Mr. Hoagg, according to Ameritech, was unable to identify a state tariff requirement that "establishes separate tariffing requirements for wholesale services as opposed to retail services[.]" Ameritech IB at 189-90, *citing* Tr. at 1743. Mr. Hoagg, unlike Ameritech, recognizes that Ameritech is required by state law to file tariffs setting forth rates terms and conditions for all of the telecommunication services it offers. This exchange clearly indicates Mr. Hoagg's views on the subject:

> Q. Now, as I understand your position, you are contending that because of state law there must also be tariffs on file for all the Ameritech Illinois' wholesale services and product; is that right?
>
> A. That's imbedded or part of the position, yes.

Tr. at 1737.

There is, of course, no separate requirement, because the General Assembly elected to embody the tariffing obligation in one section, namely Section 13-501(a). 220 ILCS 5/13-501(a). This section, as previously noted requires Ameritech to file tariffs for all the telecommunications services – as defined in Section 13-203 – that it offers, "**includ[ing] access and interconnection arrangements and services**." 220

ILCS 5/13-203. Ameritech attempts here to characterize an infinitesimal distinction as a major difference.

Moreover, it is not at all clear why Ameritech believes that getting a Staff witness to deny the existence of a state statutory requirement – which Mr. Hoagg did not do in any case – somehow renders the statute inapplicable. It is extraordinarily well settled that the interpretation or construction of statutes is a question of *law*, to be decided by the court or tribunal. *See, e.g.*, Matsuda v. Cook County Employees and Officers Annuity and Benefit Fund, 178 Ill. 2d 360, 364; 687 N.E. 2d 866 (1997); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014 (1997); Branson v. Dept. of Revenue, 168 Ill. 2d 247, 254; 659 N.E. 2d 961 (1995). It is further settled that "expert opinion" offered by non-lawyers on questions of law is pointless. Rogers v. Envirodyne Industries, 214 Ill. App. 3d 1025, 1031 574 N.E.2d 796 (1st Dist. 1991). In fact, Ameritech appears to recognize this well-settled principle, at least when it suits the company's purposes. *See, e.g.*, Tr. at 866, 871, 882 (counsel for Ameritech objects to cross-examination of an Ameritech witness regarding the construction of legal documents, asserting that such documents speak for themselves). Accordingly, Ameritech's entire line of argument in this regard is pointless and irrelevant, quite apart from the fact that the argument depends upon wholesale misrepresentation of Mr. Hoagg's remarks.

Ameritech further asserts that the Staff is somehow unable to reconcile the tariffing requirement with federal law. Ameritech IB at 188. It is not clear how, or on what basis, Ameritech reached this conclusion, in light of Mr. Hoagg's testimony as follows:

Q. Is it your view that these tariffs would operate as kind of like a baseline and would always be available to a CLEC who wanted to take service under tariff?

A. I mention that in my testimony. However, I mean, that is not in any way the totality of my view of the world of tariffs, that is simply one small component of it. The mean stepping back, the -- I mean the basic component of my position is that **in fact there is nothing that precludes or in fact makes particularly troublesome the coexistence of tariffing and interconnection agreements**.

Tr. at 1737-38 (emphasis added).

Likewise:

Q. And from your perspective that's perfectly acceptable because it is part -- it's what comes out of the negotiation process that is associated with interconnection agreements?

A. That's correct. And it's perfectly acceptable as well, stepping back again, because we have two jurisdictions in the State of Illinois. And the TA 96 set forth that framework of the associated or arbitrated interconnection agreements. And we had a system or a regulatory system of tariffing intrastate Illinois tariffs that predated TA [9]6. And they had coexisted since TA 96 became effective.

Tr. at 1740.

As Mr. Hoagg noted – and as Ameritech is fully aware – dual jurisdiction is a fact of life. The Congress recognized this when it determined that, not only was it improper to expressly invalidate state regulations, but that states should be encouraged to determine what measures "are necessary to further competition in the provision of telephone exchange service or exchange access[,]" 47 U.S.C. § 261(c), and to implement such measures. Id. Further, Congress decided that State commissions should be free to enforce their own pro-competitive orders and regulations. 47 U.S.C. §§ 251(d); 261(b).

In Illinois, one of these pro-competitive requirements is the tariffing of wholesale services. As Mr. Hoagg noted, tariffs can act as a baseline, indicating to carriers what the Commission has determined to be cost-based, TELRIC-compliant rates for a particular product or service, and hence where negotiations regarding rates for UNEs should rationally start. Staff Ex. 1.0 at 37-38; Tr. at 1737. Likewise, the federal courts have determined that state tariffs have a role to play in the context of the federal Telecommunications Act. *See* US West v. Sprint, at 1250-52.

Moreover, Staff witnesses are not, as Ameritech seems to think they are, *required* to reconcile state and federal law before Ameritech is required to obey the former. Ameritech IB at 188. Ameritech's obligation to file tariffs for all of the telecommunications services it offers, including access and interconnection services, has existed since 1997. During that period, Ameritech has simply failed to fully comply with the law. It has not sought a declaration that the law does not apply to wholesale products, nor has it sought a declaration that the law does not apply to it, despite the fact that a responsible party would take precisely such steps. *See, e.g.*, Bland v. California Public Utilities Comm'n, *et al*., 88 F. 3d 729, 737 (9th Cir. 1996) **("[Petitioner William] Bland chose to obey both the civil and utilities statutes and to bring a declaratory action challenging their constitutionality, rather than to violate the law,** await an enforcement action against him, and raise the statutes' constitutionality as a defense. Bland's decision was altogether reasonable and demonstrates a commendable respect for the rule of law.") (emphasis added). In marked contrast to the estimable Mr. Bland, Ameritech's approach appears to be best characterized by not complying with laws that, in its estimation, do not apply to it, whether or not this is

the case, without bothering to obtain a declaration, or to otherwise challenge the requirement, or seek preemption of it.

This is especially troubling in light of the fact that Ameritech concedes it has filed state tariffs for most – but not all – of its wholesale products and services. Ameritech Ex. 15.0 at 28. The products that the company does not currently tariff – unbundled loops for OCNs and DS3 circuits -- can easily be tariffed. Id. Accordingly, it is not clear why Ameritech has failed to do it[4].

Ameritech argues that the FCC does not require wholesale offerings to be tariffed in order for an RBOC to obtain Section 271 authority. Ameritech IB at 187-88. This is, however, not dispositive, since Ameritech has failed to point to any instance where an RBOC has been *granted* Section 271 authority while in violation of a valid state requirement that ILECs tariff wholesale services – a requirement of the sort that, regardless of Ameritech's views in the matter, undoubtedly exists in Illinois, and of which Ameritech is undoubtedly in violation.

Ameritech can construe Sections 13-203 and 13-501(a) however it likes[5]. Three facts however, remain. First, Ameritech is obligated by statute to file state tariffs for each and every telecommunications service that it offers, including access and interconnection services. Secondly, by its own admission, the company is not currently doing so. Third, it does not plan to do so until such time as this is

[4] As both OCNs and DS3 loops are components of EELs, one possibility is that Ameritech does not like the idea of its CLEC customers having a clear idea of the very high special access rates Ameritech wants to charge, and the low UNE rates the company is, under some circumstances, required to charge.

[5] In recent months, the Commission has been highly critical of certain of Ameritech's attempts at statutory construction. For example, the Commission described Ameritech's attempts to construe Section 13-801, describing them as "self-serving." Section 13-801 Order, ¶ 236.

convenient for it. This alone militates against any positive recommendation of the company's Section 271 application.

V. COMPLIANCE WITH SECTION 271(C)(1)(A) (TRACK A COMPLIANCE)

Staff agrees with Ameritech Illinois that the company has demonstrated that it satisfies Track A requirements. Staff IB at 37. Staff takes issue, however, with Ameritech Illinois' suggestion that the local service market is competitive, especially when Ameritech Illinois failed to support that contention with a complete and reliable analysis of market competition. *See* Staff IB at 37-39. As Staff demonstrated, Ameritech's analysis of competition in the marketplace is incomplete, unreliable, and fails to reflect realities of the marketplace. Id. at 38-39. Ameritech's analysis also fails to present an accurate estimate of CLEC access lines. Id. at 39. As Staff explained in its initial brief, Ameritech's methodology produces inflated estimates of CLEC access lines. Id. at 39. In its brief, Ameritech contends that its estimates of CLEC access lines are reasonable. Ameritech IB at 13. Ameritech Illinois uses its own records to determine the total number of its own access lines. Id. at 12. To determine the total number of CLEC access lines, however, it relies on estimates. One methodology it uses to estimate CLEC access lines is the number of listings CLECs have in the 911 database. Id. at 13. Ameritech Illinois claims that "[t]his methodology is conservative in that the 911 database includes only lines that are used for outbound calling, and excludes lines used for inward calls, faxes, or for computers." Id.

As Staff demonstrated, however, when that same methodology is used to estimate Ameritech Illinois access lines, it overstates the quantity of access lines when compared to the quantity of Ameritech Illinois access lines calculated based on the company's own records. Staff IB at 39; Staff Ex. 10.0 at 14-15; Staff Ex. 24.0 at 17-19. Ameritech has provided no adequate explanation for this disparity and, more importantly, provided no reason to depart from the conclusion that the methodology that produces an overestimation of its own access lines also produces an overestimation of CLEC access lines. For this reason, and other reasons described in Staff witness Dr. Liu's testimony, Ameritech's methodology for estimating CLEC access lines is flawed. Accordingly, Ameritech's estimation of the quantity of CLEC access lines is unreliable and likely overstated.

VI. CHECKLIST ITEM 1 –INTERCONNECTION

A. Non-Pricing Aspects of Interconnection

1. Failure to Allow Carriers to Opt-In to Reciprocal Compensation Provisions

Ameritech's initial brief reaffirms that Ameritech denies carriers the ability to opt-in to any existing interconnection agreements that contain any reciprocal compensation rates, terms, and conditions. *See* Ameritech IB at 179.[6] Specifically, requesting carriers cannot opt-into or obtain, without arbitration, any current

[6] A number of issues raised by Staff with respect to Ameritech's obligation to provide interconnection under checklist item 1 are based on or related to Ameritech's actions regarding reciprocal compensation, but do not directly involve Ameritech's obligation to provide reciprocal compensation under checklist item 13. *See* Staff IB at 41 - 54. Ameritech's initial brief addresses these arguments in the context of checklist item 13. *See* Ameritech IB at 175 - 181. Although there is some overlap between these issues, Ameritech's actions constitute a distinct violation of its checklist item 1 obligation "to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i).

interconnection agreement that includes the company's existing tariffed local reciprocal compensation rates. Staff Ex. 3.0 at 161-162. Ameritech contends that its actions are not improper because the FCC "has expressly held that the Act's 'opt-in' provisions do not apply to the terms and conditions related to compensation for ISP-bound traffic." Ameritech IB at 179, citing to *ISP-Bound Traffic Order*. As explained below, Ameritech's position is that the FCC's opt-in restriction applies not only to the rates paid for ISP-Bound traffic, but also to the rates, terms, and conditions for reciprocal compensation for local traffic. Ameritech's argument must fail because (i) it is premised on a faulty interpretation of the opt-in limitation imposed by the FCC in the *ISP-Bound Traffic Order*, (ii) it improperly denies requesting carriers the ability to opt into reciprocal compensation rates, terms and conditions for local traffic, and (iii) it improperly denies requesting carriers the ability to obtain, without arbitration, an interconnection agreement containing the very rates mandated by the *ISP-Bound Traffic Order* for both local and ISP-bound traffic.

As explained in Staff's initial brief, Ameritech's interpretation of the *ISP-Bound Traffic Order* is incorrect. *See* Staff IB at 43 – 44. The FCC limited its opt-in restriction for reciprocal compensation rates, terms and conditions "**to the rates paid for the exchange of ISP-bound traffic**." ISP-Bound Traffic Order, ¶ 82 (emphasis added); *see also* ¶ 112. The clear implication of this language is that the FCC was not restricting the ability of carriers to opt into reciprocal compensation rates, terms and conditions for **non**-ISP-bound traffic. Ameritech's attempt to extend the FCC's opt-in restriction beyond the rates for ISP-bound traffic, by asserting that reciprocal compensation rates, terms and conditions for local traffic are related to

compensation for ISP-bound traffic, is contrary to the clear intent of the FCC's order. Accordingly, the *ISP-Bound Traffic Order* does not allow Ameritech to refuse to allow carriers to opt into reciprocal compensation rates, terms and conditions for Section 251(b)(5) traffic, and the company's policy denying requesting carriers the ability to opt into reciprocal compensation rates, terms and conditions for local traffic violates its obligations under Section 252(i). 47 U.S.C. § 252(i).

Ameritech's position is also in direct non-compliance with the *ISP-Bound Traffic Order*, and as such its actions are also in violation of its duty to negotiate in good faith under Section 251(c)(1). Ameritech's tariffed local reciprocal compensation rates are those the company considers to be its Commission approved rates, and Ameritech has not elected the FCC's reciprocal compensation rate caps established in the *ISP-Bound Traffic Order*. *See* Ameritech IB at 177 ("Ameritech Illinois has not yet elected the caps, so its effective tariff reflects the Commission-approved rates for now."). The *ISP-Bound Traffic Order* states:

> For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, **we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts**. This mirroring rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

ISP-Bound Traffic Order, ¶ 89 (footnotes omitted and emphasis added).

The FCC's ordering language is clear on its face. In the event that Ameritech does not elect the FCC's reciprocal compensation rate caps, it "**must** exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation

rates" (i.e., the rate currently contained in Ameritech's reciprocal compensation tariff). Id., ¶ 8 (emphasis added).

These are precisely the terms XO Illinois, Inc. ("XO") requested of Ameritech and which Ameritech denied XO. XO attempted to opt into the Ameritech-Focal agreement, which contains reciprocal compensation rates for local traffic that match those found in Ameritech's reciprocal compensation tariff. Staff Ex. 3.0 at 162. Thus, the Ameritech-Focal agreement contains the very rates that the FCC's *ISP-Bound Traffic Order* requires Ameritech to provide requesting carriers --- rates for compensation of ISP-bound traffic that mirror what Ameritech has defined as its current Commission approved rates for Section 251(b)(5) traffic. Notwithstanding that Ameritech had not elected the FCC's rate caps (and therefore must exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation rates) and that the Ameritech-Focal agreement contained "state-approved or state-arbitrated reciprocal compensation rates", Ameritech refused to allow XO to opt into the reciprocal compensation rates, terms and conditions for both ISP-bound and Section 251(b)(5) traffic.

Ameritech's actions and policy are contrary to Section 252(i), Section 251(c)(1), and the *ISP-Bound Traffic Order*. Although the FCC restricted opt-in rights with respect to ISP-bound traffic, it is unreasonable to interpret the FCC's restriction to apply under the current situation in Illinois. [7] The Ameritech-Focal

[7] As noted by Ameritech, the legal basis for the FCC's decision in the *ISP-Bound Traffic Order* that carriers may not exercise their Section 252(i) rights to opt-in to reciprocal compensation rates for ISP-bound traffic (namely, that Section 251(g) exempted ISP-bound traffic from the reciprocal compensation obligations set forth in Section 251(b)(5) of the 1996 Act) was rejected by the D.C. Circuit in WorldCom Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002). *See* Ameritech IB at 176, n. 48. (continued…)

agreement contains rates for compensation of ISP-bound traffic that mirror Ameritech's current Commission approved rates for Section 251(b)(5) traffic, and Ameritech has not elected the rate caps and therefore must exchange ISP-bound traffic at the state-approved reciprocal compensation rates. Given Ameritech's non-discretionary obligations established in the *ISP-Bound Traffic Order*, it is unreasonable and improper to interpret that order to allow Ameritech to avoid those obligations by invoking the opt-in restriction. Even if the opt-in restriction did apply in this situation, Ameritech's attempt to negotiate terms different from those mandated by the *ISP-Bound Traffic Order* constitutes a clear breach of its duty to negotiate in good faith under Section 251(c)(1).

Finally, Ameritech's actions also constitute a direct violation of the *ISP-Bound Traffic Order*. As noted by Staff witness Dr. Zolnierek, the Administrative Law Judge in the XO Arbitration summarized Ameritech's position regarding XO's request as follows:

> In Ameritech's view, the rates for reciprocal compensation under subsection 251(b)(5) are "legitimately related" to compensation for ISP-bound traffic and are, for that reason, unavailable to XO. Accordingly, Ameritech contended, new rates for subsection 251(b)(5) traffic must be determined first, after which the rates for ISP-bound traffic would be determined in accordance with the ISP Order. Accordingly, Ameritech proposed such rates (discussed in greater detail in Section IV.B. below) to replace the corresponding rates in the Focal Agreement.

(continued from previous page)
Although Ameritech correctly notes that the FCC has continued to apply its *ISP-Bound Traffic Order* after the WorldCom decision based on the fact that the D.C. Circuit remanded the FCC's decision but did not vacate it, it is questionable whether the opt-in restriction from the *ISP-Bound Traffic Order* will survive following the FCC's decision on remand given that there is no recognized legal basis for this aspect of the decision and the D.C. Circuit has twice rejected the FCC's reasoning in this regard.

Staff Ex. 3.0 at 161; XO Arbitration Proposed Order at 4.[8]

Thus Ameritech refused to provide XO the rates that it then and still considers its Commission approved reciprocal compensation rates for Section 251(b)(5) traffic. As a consequence of Ameritech refusing to provide XO the current Commission approved local reciprocal compensation rates, Ameritech also denied XO the ability to mirror its Commission approved rates for the exchange of ISP-Bound traffic. Ameritech's behavior constitutes direct non-compliance with the plain language of the FCC's *ISP-Bound Traffic Order*. The result of Ameritech's non-compliance is that Ameritech forced XO to seek arbitration to obtain the very rates, terms, and conditions that Ameritech is required to provide under current Commission and FCC reciprocal compensation rules and regulations.

The rationale Ameritech relies on to support its actions, like the actions themselves, is inconsistent with the FCC's *ISP-Bound Traffic Order*. The FCC explained that "[t]o permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here … would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery." ISP-Bound Traffic Order, n.154. Ameritech has rejected the FCC's transition plan, but continues to invoke the associated opt-in restrictions. The two cannot be dissociated. If Ameritech chooses not to operate under the FCC's transition plan (i.e., declines to operate under the rate caps), then there is no support for an opt-in restriction, particularly when it denies carriers the very rates the *ISP-Bound Traffic Order*

[8] On October 2, 2001, the Commission's granted XO's Petition To Withdraw And Terminate Docket.

requires Ameritech to provide if it declines to operate under the rate caps. Ameritech has declined to invoke the rate caps, but invokes the opt-in restriction anyway.

Ameritech has not satisfied the requirements of Checklist Item 1. In order to comply with Checklist Item 1, Ameritech must offer interconnection in compliance with the requirements of Section 251(c)(2) of the 1996 Act. 47 U.S.C. § 271(c)(2)(B)(i). Section 251(c)(2) requires Ameritech to provide interconnection in accordance with the provisions of Section 251 and Section 252 of the Act. 47 U.S.C. § 251(c)(2). Under Section 251 Ameritech is required to negotiate agreements in good faith, 47 U.S.C. § 251(c)(1), and under Section 252 Ameritech is required to allow requesting carries to opt into the rates, terms and conditions of approved interconnection agreements to which it is a party. *See* 47 U.S.C. § 252(i). Ameritech's policy of refusing to allow carriers to opt into approved interconnection agreements containing reciprocal compensation rates, terms and conditions that this Commission and the FCC require it to provide clearly constitutes non-compliance with its obligations to allow carriers to opt-in to existing agreements and negotiate in good faith pursuant to Section 251(c)(2). Additionally, Ameritech's policy and actions are a direct violation of the *ISP-Bound Traffic Order*.

2. Good Faith Negotiation Issues

Staff demonstrated in its initial brief that (i) Ameritech has established an improper policy whereby it asserts that it is free, under the FCC's *ISP-Bound Traffic Order*, to elect the FCC's reciprocal compensation rate caps at any point in the future, (ii) Ameritech's position is contrary to the *ISP-Bound Traffic Order* under

applicable rules of construction, (iii) Ameritech's policy creates substantial uncertainty for CLECs and has an anticompetitive effect, and (iv) Ameritech's policy is contrary to its obligation to provide interconnection on rates, terms and conditions that are just, reasonable and non-discriminatory under Section 251(c)(2), and its duty to negotiate in good faith under Section 251(c)(1). Staff IB at 49 - 54. Ameritech argues that the FCC left the decision as to when (or whether) to declare its intention to implement the FCC's rate caps up to each incumbent on a state-by-state basis. Ameritech IB at 177. Ameritech contends that the absence of any reference to a specific date or time period in the *ISP-Bound Traffic Order* means that it is free at any time to change the pricing regime applicable to ISP-bound and Section 251(b)(5) traffic. As explained in Staff's initial brief, Staff IB at 51-52, this contention is contrary to law. "Where an order, statute or contract imposes a duty or requires the performance of some action, but is silent as to when it is to be performed, a reasonable time is implied under general rules of construction." Id. at 51 (citations omitted).

Although Ameritech does not take into account the general rules of construction applicable to orders, it does introduce a new argument to support its contention that there are no time limitations on an ILEC's ability to elect into the rate caps. Ameritech contends that the FCC contemplated that incumbent LECs "would elect into the caps at different times". Ameritech IB at 177. In support of this contention, Ameritech relies on two aspects of the FCC's *ISP-Bound Traffic Order*. Ameritech first relies on the fact that the "starting point" of the FCC's transitional compensation plan depends in part on the remaining life of any existing agreements

and the existence of any "change of law" provisions. Id[9]. The fact that the FCC declined to have its new rate caps supercede the terms and conditions of "existing" agreements does not support Ameritech's position. The FCC's deference to "existing" agreements does not address "when" an ILEC would elect the caps. Rather, the FCC's decision on "existing" agreements addresses "how" the rate caps will be applied after an ILEC has elected the rate caps. To the extent that the FCC's deference to "existing" agreements implies anything about when an election is to be made, it supports Staff's position that an election must be made within a reasonable time from the date of the *ISP-Bound Traffic Order*. That is, the FCC's decision to treat agreements "existing" at the time of the *ISP-Bound Traffic Order* differently from agreements negotiated after that date necessarily implies that the FCC considered the date of its order to be the critical date for purposes of an ILECs election of rate caps.

Ameritech next asserts that because the FCC's rate caps are changing over time, Ameritech might find them desirable at some other time in the future. Ameritech IB at 177. This assertion may provide Ameritech's motive for attempting to game its election decision, but it does not support the conclusion that the FCC intended to permit Ameritech to game its election. Indeed, Ameritech's position is directly contrary to the FCC's stated objective of providing certainty pending its final resolution of this issue:

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[9] The FCC held that "[t]he interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions." ISP-Bound Traffic Order, ¶ 82.

> [T]he interim regime we adopt here "provides relative certainty in the marketplace" pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments.

ISP-Bound Traffic Order, ¶ 94.

Ameritech also asserts that this Commission is not the appropriate body to consider Staff's criticism, which it characterizes as a request to "alter the terms of the deal between the FCC and Ameritech Illinois."[10] *See* Ameritech IB at 177 - 178. Ameritech is incorrect on both counts. Staff is not requesting that anything be altered. Moreover, Ameritech has provided no credible basis to contest Staff's reading of the *ISP-Bound Traffic Order*. Ameritech is far off base in its attempt to equate interpretation of an order with the modification or alteration of an order. To use Ameritech's terminology, Staff has simply pointed out Ameritech's non-compliance with the "deal" (the *ISP-Bound Traffic Order*) and its resulting non-compliance with Checklist Item 1, and recommended that this Commission condition a favorable recommendation to the FCC on Ameritech's correction of these deficiencies (through a declaration by Ameritech of its election decision).

Ameritech's assertion that this Commission is not the appropriate body to consider this issue also lacks merit. The fact that the Commission is conducting an investigation into Ameritech's compliance with the requirements of Section 271 for purposes of its consultation with the FCC, rather than serving as the ultimate decision maker on Ameritech's anticipated request before the FCC for Section 271

[10] Putting aside that orders are not contracts, Staff does not understand why Ameritech believes CLECs and other parties to that proceeding were not a party to the so-called "deal" concerning reciprocal compensation.

relief, provides no support for Ameritech's argument. *See* Ameritech IB at 178. It is entirely proper and permissible for this Commission to advise the FCC (i) that it interprets the FCC's *ISP-Bound Traffic Order* to require ILECs to decide whether to elect the rate caps set forth therein within a reasonable amount of time from the date of the FCC's order, and (ii) that Ameritech is not in compliance with Checklist Item 1 because its policy (asserting that it is free to elect the FCC's reciprocal compensation rate caps at any point in the future) is contrary to the *ISP-Bound Traffic Order*, impedes competition, and creates uncertainty in violation of Ameritech's duties (a) to provide interconnection on rates, terms and conditions that are just, reasonable and non-discriminatory and (b) to negotiate in good faith. Any concern that the FCC should be the body that makes this decision is met because it is the FCC that will be the ultimate decision maker after considering this Commission's recommendation.

Ameritech also contends that its compliance with the *ISP-Bound Traffic Order* is not relevant because the *ISP-Bound Traffic Order* "governs compensation for ISP-bound traffic, which the FCC has held is 'irrelevant' to checklist item 13". Ameritech IB at 178. Ameritech's argument is not well founded. Although the *ISP-Bound Traffic Order* does govern compensation for ISP-bound traffic, it also governs, under certain conditions applicable here, the compensation for local traffic subject to Section 251(b)(5). *See* ISP-Bound Traffic Order, ¶¶ 89 - 94. Thus, the major premise underlying Ameritech's argument is faulty. Staff has fully explained why Ameritech's policy of maintaining that it is free at any time to elect the FCC's reciprocal compensation rate caps constitutes non-compliance with Checklist Item

13. *See* Staff IB at 193 – 204; *see also infra*). Those same actions also violate Checklist Item 1 as explained above. *See also* Staff IB at 49 – 54.

Ameritech's non-compliance with the FCC's *ISP-Bound Traffic Order* has and continues to have a direct and negative effect on the ability of carriers to obtain negotiated local reciprocal compensation rates, terms, and conditions in their interconnection agreements. As Mr. Alexander's testimony makes clear, Ameritech believes that carriers that have negotiated interconnection agreements while Ameritech has delayed its ISP-bound rate cap election decision will be forced to renegotiate those contracts if and when Ameritech makes an election. Tr. at 1529-1532. This introduces unnecessary uncertainty imposed solely by Ameritech into all recent and any new interconnection agreements.

Ameritech's attempts to downplay the uncertainty created by its policy are similarly unavailing. Ameritech contends that "[t]he uncertainty is not significant" because the "rate caps are published in the FCC's order" and because Ameritech offers CLECs "a contractual provision that provides 20 days advance notice of any election." Ameritech IB at 178. Although the rate caps are published, they are "rate caps" rather than rates. Thus, it is not known what the actual rates will be if Ameritech makes an election. Such uncertainty is both real and significant. Indeed, Ameritech's own witness could not shed light on the actual rates that would apply if the rate caps were elected. Tr. at 1531. Similarly, 20 days' notice of an election does little to abate the harm or alleviate the uncertainty caused by Ameritech's policy. As noted by the FCC, certainty is needed to allow "carriers to develop business plans, attract capital, and make intelligent investments." ISP-Bound Traffic

Order, ¶ 94. Ameritech's cannot seriously contend that 20 days' lead time is either sufficient or normal in connection with developing business plans, attracting capital, or making investment decisions.

In a last ditch effort to save its ill-conceived policy, Ameritech appears to argue that uncertainty is not improper because it is inherent and unavoidable under the FCC's interim regime:

> In any event, complete certainty cannot be achieved under Staff's proposal: after all, the elective "caps" are merely a transitional mechanism, and the FCC is still considering final rules whose content is uncertain for incumbents and CLECs alike.

Ameritech IB at 178.

Ameritech's argument is contrary to, and completely ignores, the FCC's ruling that its interim regime "… 'provides relative certainty in the marketplace' pending further Commission action" and "provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the NPRM proceeding." ISP-Bound Traffic Order, ¶¶ 94, 95. Ameritech is in no position to dictate its view that uncertainty is appropriate, and its contention that "CLECs can live with some uncertainty" should be summarily rejected. *See* Ameritech IB at 178. Ameritech's argument serves only to further prove that it has improperly implemented the *ISP-Bound Traffic Order*. Ameritech's implementation represents non-compliance with Ameritech's Section 251(c)(2) requirement to negotiate in good faith and thus represents non-compliance with Checklist Item 1.

3. Third Party Terms and Conditions of Interconnection (Transiting)

Staff's initial brief established that Ameritech is not in compliance with its Checklist Item 1 obligations because it fails to accept traffic from an interconnected CLEC when the CLEC is delivering local traffic originated on a third party's network ("transiting traffic"). *See* Staff IB at 54 – 58. Ameritech contends that there is no requirement under Section 271 to accept transiting traffic, but nevertheless maintains that it "does, in fact, accept such traffic". Ameritech IB at 22. Neither assertion is correct.

Section 252(c)(2) establishes the additional interconnection obligations of incumbent LECs under the 1996 Act, and provides, in relevant part, as follows:

> (2) INTERCONNECTION- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
>
> > (A) for the transmission and routing of telephone exchange service and exchange access;

47 U.S.C. §251(c)(2).

Ameritech's assertion that there is no requirement under Section 271 to accept transiting traffic is premised on its reading of subparagraph (A) of Section 251(c)(2). Ameritech IB at 22, n. 4. Ameritech contends that when a CLEC provides transiting service, it is not providing "telephone exchange service" or "exchange access" in accordance with subparagraph (A) of Section 251(c)(2) because the CLEC is not providing that service directly to an end user. Id. Thus, although Ameritech contends that "transiting" is not "telephone exchange service" or "exchange access", Ameritech does not take issue with the fact that the overall service, of which the CLEC's transiting service is an input or component, constitutes "telephone exchange

service" or "exchange access". Rather, Ameritech argues that a component of such overall service, namely, transiting, is neither "telephone exchange service" nor "exchange access".

Ameritech's attempt to artificially limit its duty to provide interconnection for telephone exchange service or exchange access to those instances where such services are **provided directly by the interconnecting carrier to an end user** is not supported by the language of Section 252(c)(2). Section 252(c)(2)(A) only requires that the interconnection be used "for the transmission and routing of telephone exchange service and exchange access", and it is not disputed that the transiting services at issue are being used for such services. Section 252(c)(2) nowhere imposes the additional limitation on interconnection to "telephone exchange service" or "exchange access" provisioned by the interconnecting carrier directly to an end user. Congress could have easily limited an ILEC's duty to interconnect to interconnection used for the transmission or routing of traffic originating or terminating on the LECs network, but it did not. Ameritech's erroneous reading of the 1996 Act must be rejected.

Ameritech's assertion that it accepts transiting traffic and thereby complies with an obligation that it disputes is equally unpersuasive. As pointed out in Staff's initial brief, Ameritech's witness on this issue has made conflicting representations. *See* Staff IB at 57 (Ameritech's witness testified "that Ameritech currently, in practice, accepts third party local traffic from interconnecting carriers, that it doesn't currently, in practice, accept third party local traffic from interconnecting carriers, and that he doesn't know if Ameritech currently, in practice, accepts third party local

traffic from interconnecting carriers.") On the other hand, Staff has clearly demonstrated that Ameritech has blocked at least one CLEC from incorporating terms for transiting in its interconnection agreement. Id. at 57 – 58.

Ameritech is arguing that if a carrier builds a local telephone network in Illinois that provides interoffice transport for other carriers then Ameritech is not required to interconnect with that carrier. Such a policy serves no other purpose than to discourage competition in Illinois -- none whatever. No other position taken by the company in this proceeding as clearly and simply demonstrates Ameritech's failure to comply with, and willingness to impede, the competitive provisions of the 1996 Act.

4. Single Point of Interconnection

Subsequent to the filing of initial briefs, Staff and Ameritech entered into a Stipulation to Eliminate Issues ("Stipulation") filed with the Commission via e-docket on August 23, 2002. The Stipulation provides that certain issues raised by Staff and Ameritech have been addressed adequately in ICC Docket No. 01-0614 and in the 01-0614 Compliance Tariff (as defined in the Stipulation) (the "01-0614 Stipulation Issues") and, except as specifically provided in the Stipulation, need not be addressed again in this docket. The terms and conditions under which Ameritech Illinois offers a single point of interconnection or "SPOI" (the "SPOI Issue") is one of the 01-0614 Stipulation Issues. The Stipulation reserves Staff's right to address the SPOI Issue if it is raised by other parties to this proceeding, and to raise the issue of Ameritech Illinois' compliance with the 01-0614 Compliance Tariff in Phase 2 of this proceeding. Therefore, in accordance with and subject to the terms and conditions

of the Stipulation, Staff's current position is that the issues Staff raised with respect to the SPOI Issue have been addressed adequately in ICC Docket No. 01-0614 and in the 01-0614 Compliance Tariff, and need not be addressed again in this docket except as provided in the Stipulation. Staff takes no position on SPOI Issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

5. Collocation Requirements

a) Collocation Provisions of Section 13-801 of the PUA

In its initial brief, Ameritech contends that Staff's position that it should be required to comply with the Commission's Order in Docket 01-0614, as a condition to a positive Section 271 recommendation, is "inappropriate" and unnecessary for Section 271 approval. Ameritech IB at 193-4). This argument is not persuasive, as Staff has already shown. *See* Staff IB at 11-13.

In the context of collocation issues, Ameritech's assertion indicates its misguided view that state collocation obligations imposed by the Illinois legislature and this Commission should play no part in this Commission's consultation with the FCC to determine whether Ameritech has opened its market to competition. Compliance with the collocation requirements enacted by the State of Illinois is mandatory not merely for satisfaction of state requirements but because those state requirements attempt to fulfill the purposes of TA96. In addition, state imposed collocation requirements fulfill the public interest in the systemic development of a competitive telecommunications marketplace. Prior to Ameritech's 271 application,

the General Assembly established collocation standards in Section 13-801 of the PUA that were applicable to Ameritech Illinois for the express purpose of opening up its market to competition. Staff IB at 19-21. It is therefore ironic that in the course of Ameritech's pursuit of Section 271 approval, Ameritech now wants this Commission to jettison the General Assembly's market opening provisions applicable to Ameritech.

Not only does Ameritech inappropriately disregard state collocation requirements, Ameritech also misconstrues federal law in an attempt to argue that Staff's position, which was ultimately adopted by the Commission in Docket 01-0614, eliminates a limitation imposed by federal law. Ameritech IB at 193-194. There is no need to give any credence to this argument. In Docket 01-0614, this Commission specifically heard and rejected Ameritech's arguments regarding the collocation requirements supported by Staff. Moreover, the Commission found that federal law did not preempt Section 13-801 and eloquently stated that, in fact, Section 13-801 is not inconsistent with Sections 251 and 252 of the TA96. (Order, Docket 01-0614 at 18-19). Indeed, in its initial brief, Ameritech concedes that Docket 01-0614 resolved these issues in Staff's favor. Ameritech IB at 194. Subsequent to the filing of initial briefs, Staff reviewed Ameritech's compliance tariff on collocation in Docket 01-0614 and found it adequate. Stipulation at 2. The Stipulation reserves Staff's right to address the collocation issues resolved in Docket No. 01-0614 if any are raised by other parties to this proceeding, and to raise the issue of Ameritech Illinois' compliance with the Section 13-801 Order Compliance Tariff in Phase 2 of this proceeding. Therefore, in accordance with and subject to the terms and

conditions of the Stipulation, Staff's current position is that the issues Staff raised with respect to these issues have been addressed adequately in the *Section 13-801 Order* and in the *Section 13-801 Order* Compliance Tariff, and need not be addressed again in this docket except as provided in the Stipulation. Staff takes no position on collocation issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

Therefore, Staff's current position with respect to these issues is that Ameritech should comply with its tariff and the *Section 13-801 Order* and that such compliance should be monitored and confirmed during Phase 2 of this proceeding.

b) All Equipment List (AEL)

The issue of identification of compliant collocation equipment has been of immense interest to this Commission because of the usefulness of the information to the CLECs and the need to ensure that the safety standards imposed by ILECs on CLECS are not more stringent than the standards they impose with respect to their own equipment. As part of its efforts to promote the development of competitive marketplace and to prohibit discrimination, the Commission ruled in Docket 99-0615 that Ameritech post on its website the list of all collocation equipment which meets Ameritech's safety standards. Collocation Tariff Order at 17.

Ameritech objects to the Commission's ruling on five grounds. First, Ameritech argues that the Commission has gone beyond federal law. In its initial brief, Ameritech argues that "Ameritech Illinois' expanded state law obligation is to maintain a list *in advance* of *all* equipment located in *all* of its central offices, not just

after it actually denies a CLEC collocation request and not just for the office where collocation is denied." Ameritech IB at 195. Staff agrees that this Commission imposed an additional state obligation upon Ameritech but points out that Ameritech raised federal preemption arguments in the proceeding in Docket 99-0615 and they were rejected there. As a result, they should not be reconsidered here. Rather, the Commission should condition a positive recommendation to the FCC upon Ameritech's compliance with the Commission's *Collocation Tariff Order*.

Second, Ameritech argues that it "would be extremely burdensome" for it to comply with the *Collocation Tariff Order*. This argument was also fully addressed and rejected by this Commission in the *Collocation Tariff Order* well over two years ago. It is particularly inappropriate for Ameritech to reargue factual issues in this Section 271 proceeding that were more adequately and specifically addressed in another docket. This proceeding should not be an opportunity for Ameritech to get another bite at the apple with respect to those issues it has lost in other dockets while at the same time holding Staff and this Commission to previous rulings that impacted Ameritech favorably.

Moreover, the instant docket is not an appellate forum for review of the *Collocation Tariff Order*. Ameritech has already taken, and lost, its appeal of the *Collocation Tariff Order*. *See* Illinois Bell Telephone Co. v. ICC, 327 Ill. App. 3d 768, 762 N.E.2d 1117 (3rd Dist. 2002) (Appellate Court affirms the Collocation Tariff Order). Now, well over two years *after* the Commission issued the *Collocation Tariff Order*, Ameritech contends in this Section 271 proceeding that it cannot comply with the Commission's directive. Indeed, Ameritech's resurrection of its argument that

compliance with the *Collocation Tariff Order* is overly burdensome raises disturbing questions regarding Ameritech's managerial approach to compliance with Commission orders. Ameritech appears to prefer to implement delaying maneuvers rather than complying or exercising legal appeal rights in connection with this Commission's orders. In fact, at no time in the last two years has Ameritech either sought relief from the mandates of the *Collocation Tariff Order*, or complied with the Order by producing a reliable AEL that identifies compliant collocation equipment.

Third, Ameritech claims that Staff misinterprets the Commission's order and that Staff's position is a "newly expanded view" of the Commission's requirement as set forth in the *Collocation Tariff Order*. Ameritech IB at 195-196. This assertion is untrue. Staff's position is consistent with the *Collocation Tariff Order* and is neither new nor expands the Commission's order. Staff simply rejects Ameritech's attempt to impose collocation requirements that are in addition to the safety requirements that Ameritech is entitled to impose under federal law. Ameritech, by posting a list of compliant equipment that includes caveats that state that the list includes equipment "that is known not to meet the criteria to be allowable for collocation[,]" Collocation Tariff Order at 17; Staff IB at 77, fails to comply with the Commission's order. The Commission directed Ameritech to post this list of compliant equipment in order to provide CLECs with a list of equipment that they can be assured is compliant. Ameritech's vague caveats undercut the intent of the Commission's order and appear to be intentional maneuvers to circumvent the Commission.

Fourth, Ameritech argues that its current all-inclusive 13 state AEL is useful to the CLECs. Ameritech IB at 196-197. There is not one iota of evidence from any

CLEC to back up this assertion. Moreover, Ameritech's caveats to its compliant equipment list make it virtually impossible to know what equipment would be compliant in Illinois since the 13 state list may identify equipment that would not satisfy Illinois specific collocation requirements. Even if the 13 state AEL were useful to the CLECs, this fact would be irrelevant since Ameritech would still not be in compliance with this Commission's order.

Fifth, Ameritech contends that CLECs make their own equipment decisions and CLEC engineers generally know what types of equipment are suitable for collocation. Ameritech IB at 196. In essence, Ameritech argues that they do not need to comply with the Commission's orders because the CLECs have, through their own efforts, figured out "generally" which equipment is compliant. This argument provides no support for Ameritech's lack of compliance. The CLECs should not have been required to figure out what Ameritech considers compliant with Ameritech's safety requirements. Ameritech should have made that information available as ordered, and should be continued to be required to make this information available on an updated basis. It is no answer for Ameritech to admit that their non-compliance forced the CLECs to use their resources to figure out Ameritech's past safety standards.

In summary, the Commission has already considered, and rejected, the arguments Ameritech makes in this proceeding. It is Staff's position that these arguments should be rejected here as well. It is high time Ameritech complied with the directives of the *Collocation Tariff Order* by providing an Illinois AEL that lists all compliant collocation equipment either quarterly or as soon as new equipment is

added. The Commission should condition a positive Section 271 recommendation upon Ameritech's compliance with the *Collocation Tariff Order*.

c) Power Cabling

Ameritech argues that Staff's position on power cabling (along with that of McLeodUSA) is "incorrect" because Ameritech's disputed power cabling policy is only a "negotiating position" held in the context of interconnection agreements. Ameritech IB at 197. This is irrelevant. Staff's position is that Ameritech's "negotiating position" should be consistent with federal law in that Ameritech should provide power cabling in virtual collocation situations. The fact that this Commission has ruled against Ameritech's arguments in the McLeod arbitration supports Staff's position. McLeod Arbitration Order at 26-28.

Moreover, Ameritech's attempt to keep the Commission's order within the context of an arbitrated agreement must fail. In the McLeod arbitration proceeding, Ameritech made its legal arguments that its "negotiating position" was consistent with federal law and it failed to persuade the Commission. Thus, Ameritech, having failed to obtain Commission acceptance of a "negotiating position" that is inconsistent with federal law, nevertheless seeks the Commission to ignore this same federally inconsistent "negotiating position" in determining whether or not Ameritech has satisfied the requirements of the interconnection checklist. Ameritech's argument should be rejected once again.

Ameritech brought the issue of power cabling into the forefront when it strenuously argued both during the negotiation stage of an interconnection agreement and its eventual arbitration proceeding, Docket 01-0623, that the

opposing CLEC, McLeodUSA, must undertake power cabling in virtual collocation situations. This position was rejected by this Commission to preserve the unique characteristics of virtual collocation. McLeod Arbitration Order at 27-8, 31. It should be pointed out that the crux of this matter is not power cabling in itself but, the need to preserve the regulatory requirements governing virtual collocation arrangements. A situation in which Ameritech or any ILEC could alter the requirements for virtual collocation would lead to evisceration of virtual collocation as an option, clearly contrary to federal law. Ameritech's position in this 271 proceeding signals Ameritech intention to erode the prevailing federal rules governing virtual collocation arrangements. The goals of this Commission on power cabling, expressed in the McLeodUSA arbitration, are to preserve those rules and make sure that Ameritech does not attempt to foist its responsibilities onto the CLECs. Id. Ameritech's "negotiating position," first attempted with McLeodUSA, and now maintained with respect to other CLECs, that CLECs rather than Ameritech must provide and maintain power cabling for virtual collocation arrangements clearly goes against the federal scheme and should be rejected on that basis. Moreover, Ameritech's current position directly contradicts its earlier practice and interpretation of federal law, as pointed out in Staff's initial brief. Staff IB at 86-87.

Although this issue was resolved in favor of McLeodUSA in its arbitration, Ameritech has attempted to limit the impact of the Commission's order to McLeodUSA only. Ameritech indicates it "will comply with the Commission's arbitration order." Ameritech Ex. 1.1 at 24-5. Ameritech however also indicates in its response to Staff's Data Request in this proceeding and reiterated in Ameritech's

initial brief that it will impose on all other CLECs the requirement that the CLEC undertake power cabling in virtual collocation arrangements. Staff IB at 87-88; Ameritech IB at 197. Staff maintains that in order to preserve the characteristics of virtual collocation arrangements, the Commission must jealously guard against any erosion of prevailing rules governing virtual collocation arrangements.

Ameritech also states that its "expectation that CLECs will provide the power cabling is consistent with FCC requirements." Ameritech IB at 197. This is clearly an untenable interpretation of existing FCC regulations because, under FCC virtual collocation requirements, ILECs such as Ameritech "must install, maintain, and repair interconnector-designated equipment." Local Competition Order, ¶ 559. In fact, Ameritech has never cited any FCC requirements that support Ameritech's position because the reality is that they do not exist. The Commission should reject Ameritech's position and insist that it continues to provide power cabling for virtual collocation arrangements. Otherwise, the well-defined collocation requirements governing virtual collocation will be gradually obscured and obliterated, an occurrence that does not augur well for the development of competitive facilities-based carriers.

VII. CHECKLIST ITEM 2 - UNEs

A. UNE Availability in General and Availability of Newly Defined UNEs (Ameritech's BFR Process)

Ameritech requests this Commission to recommend to the FCC that it meets its checklist item 2 requirements, but obscures the criteria on which that evaluation is to be based. The company states:

> …the FCC has no current regulations for it or state commissions (under their limited power to do so) to apply when determining whether a specific network element is subject to the 1996 Act's unbundling obligations. Instead, the standards that govern unbundling will remain unknown until the FCC establishes new rules.

Ameritech IB at 33 (footnotes omitted). The company further states that:

> The Commission is acting as an advisor to the FCC, not a rulemaker ,and the FCC has made clear that compliance with existing federal requirements (as opposed to the creation of new requirements) is the only relevant inquiry in a section 271 proceeding.

Ameritech IB at 34. Ameritech's arguments seems to imply that it does not currently have any requirements to meet regarding its provisioning of UNEs. Obviously, Ameritech knows it is subject to standards, but it fails to recognize them with respect to checklist item 2, and other UNE related checklist items such as checklist Items 4, 5, and 6, by rejecting out of hand any serious analysis of the rates, terms, and conditions under which it makes available those UNE offerings.

Ameritech does assert that:

> …the Commission need not concern itself with future unbundling rules, because (as shown below) Ameritech Illinois is in compliance with its pre-USTA obligations.

Ameritech IB at 34. However, while Ameritech asserts, rather indirectly, that the Commission might evaluate it according to pre-USTA rules, the company makes it clear that this is only to the extent that the Commission does not conduct a comprehensive evaluation of such compliance. For example, Ameritech asserts that Staff is asking the Commission to create a new series of rules for how to provide the pre-USTA UNEs, and asserts that "…it would be difficult to conceive of a more inappropriate time to consider additional unbundling." Ameritech IB at 35.

In evaluating Ameritech's compliance with pre-USTA UNE rules, Staff did not develop new rules. Rather, as Staff explained in its initial brief, it applied criteria that are not only reasonable, but also self-evident. Staff IB at 100. The sole example Ameritech cites to support its contention that Staff's criteria are inconsistent with the FCC's rules is the assertion that

> Staff's suggestion that 271 approval requires that all rates be permanent, rather than interim, to eliminate "uncertainty" (Staff Ex. 3.0 (Zolnierek Direct) at 85-86, 70-72), has been rejected by the FCC.

Ameritech IB at 35.

In formulating its sole example, Ameritech mischaracterizes Dr. Zolnierek's analysis. While noting that the Commission could require Ameritech to eliminate rate uncertainty prior to recommending that Ameritech's Illinois Section 271 application be approved, Dr Zolnierek recommended the following alternative:

> …alternatively, the Commission should employ the approach adopted by the FCC - specifically, the Commission can evaluate whether Ameritech's rates fall within a zone of reasonableness when compared to rates in other states that have been found to be TELRIC compliant. While obviously this approach is not as definitive as the result of a complete Commission investigation of Ameritech cost studies, I believe this approach, under the following circumstances, is sufficient.
>
> - The Commission should require Ameritech to reduce all its rates, both recurring and non-recurring, to levels that are clearly within a range that can be shown to be TELRIC compliant. While I recognize that some of Ameritech's long-term recurring rates and interim rates might currently adhere to this standard, others do not.
> - Given the Company's lack of compliance with Commission and FCC TELRIC guidelines, the burden to prove that its adjusted rates fall within this range is squarely on the company. Thus, the Company must submit state to state UNE rate comparisons, retail rate to UNE rate comparisons, and any other evidence that would support a finding that Ameritech has, subsequent to the initiation of this proceeding, brought each of its rates within a range that can be considered by any reasonable standard to be within the range of TELRIC compliance.

Staff Ex. 3.0 at 86-87.

Thus, Staff specifically stated that the Commission and the FCC could find that Ameritech meets cost criteria when making UNEs available even in the absence of permanent UNE rates. Ameritech's omission of this fact, results in mischaracterization of Staff's analysis. Further, Ameritech's characterization of the FCC's requirements is itself ill conceived. The FCC has specifically stated:

> Although the Commission has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding. At some point, states will have had sufficient time to complete these proceedings. The Commission will, therefore, become more reluctant to continue approving section 271 applications containing interim rates. It would not be sound policy for interim rates to become a substitute for completing these significant proceedings.

FCC Bellsouth GA/LA 271 Order, Appendix D, ¶ 24.

As this statement indicates Staff's findings are entirely consistent with the FCC's findings on this matter. Thus, Ameritech's example is entirely ill conceived.

Based on a single ill-conceived example, Ameritech asserts that "Staff's proposals are not currently required by the FCC, and many of those proposals have been affirmatively rejected by the FCC in section 271 proceedings. Ameritech IB at 35. Ameritech is wrong. Perhaps, recognizing this fact, Ameritech falls back once again on its argument that the D.C. Circuit has rejected the FCC's impair test and resulting rules suggesting that even if Staff's evaluation is consistent with pre-USTA FCC rules, that Ameritech need not comply with those rules.

In the instant proceeding, Staff has raised a number of issues regarding Ameritech's general UNEs offerings and Ameritech's BFR process. A number of

these issues addressed Ameritech's failure to make the UNEs it offers transparent or the company's inappropriate imposition of usage restrictions. In particular, Staff identified, as inappropriate, restrictions imposed on carriers using Ameritech-provided UNEs to provision telecommunications services to other carriers, as well as Ameritech's failure to fully define "wire center" and consequently its dedicated transport offering. Staff IB at 103-109. As Staff's initial brief noted, Ameritech's policies and procedures with respect to these two issues are confused at best. Staff also raised the issue of the appropriateness of Ameritech's BFR process as a process to supply UNEs under the 1996 Act's necessary and impair standards. Staff IB at 112-114.

In light of the confusion regarding Ameritech's actual polices and practices, Staff recommended that the Commission increase monitoring of Ameritech's UNE provisioning processes. Staff IB at 110. To be clear, Staff continues to recommend that Ameritech permit carriers that use Ameritech UNEs to resell telecommunications services and that Ameritech continue to supply dedicated transport to the extent required by the Act's necessary and impair standards. Staff also remains concerned that Ameritech's BFR process may impair requesting carriers' ability to provide their desired services using Ameritech's provided UNEs. However, through increased monitoring of the BFR process the Commission will be able, on a going forward basis, to determine whether Ameritech complies with its checklist requirements and provides all UNEs consistent with the Acts necessary and impair standards. Such an approach is consistent with that adopted by the Commission in the *Section 13-801 Order* with regard to Ameritech's provisioning

process for UNE-combinations. In its *Section 13-801 Order*, the Commission found that :

> [b]y remaining involved in the process of compiling a record of its [the BFR-OC's] facility, the Commission will be in a better position to determine whether it should be allowed to continue in the event that Staff or another party suggests that it should not.

Section 13-801 Order at 150.

Thus, through increased monitoring of the type ordered in *the Section 13-801 Order*, the Commission will not only be able to determine whether Ameritech is provisioning all of the UNEs that it is required to provide in accordance with Section 271 of the Act, but will also be able to determine whether the BFR process itself is, as Ameritech contends, Ameritech IB at 99, an appropriate mechanism for provision. In the event the BFR proves inadequate the Commission can pursue remedial action.

Staff acknowledges that Ameritech Illinois has agreed to amend its bona fide request process as set forth in ICC Tariff No. 20, Part 19, Section 1, 5th Revised Sheet No. 3. The Stipulation filed with the Commission via e-docket on August 23, 2002 provides that the general UNE availability issues concerned with ubiquity, provisioning and usage flexibility, and transparency criteria and all issues related to Ameritech's provision of new UNEs that were raised by Staff and Ameritech have been addressed adequately by the Company's agreement to amend its BFR process in accordance with Schedule 1 of the Stipulation. The Stipulation reserves Staff's right to address general UNE availability issues concerned with ubiquity, provisioning and usage flexibility, and transparency criteria and issues related to Ameritech's provision of new UNEs if it is raised by other parties to this proceeding. Therefore,

in accordance with and subject to the terms and conditions of the Stipulation, Staff's current position is that general UNE availability issues concerned with ubiquity, provisioning and usage flexibility, and transparency criteria and issues related to Ameritech's provision of new UNEs that Staff raised have been addressed adequately and need not be addressed again in this docket except as provided in the Stipulation.

B. Availability of UNE Combinations (New and Pre-existing)

Ameritech asserts that it "… provides existing combinations of UNEs: that is, it does not separate UNEs that are already combined, unless the CLEC so requests." Ameritech IB at 36. Ameritech also asserts that it provides "…new combinations of UNEs that are at least sufficient to meet (if not exceed) the requirements of federal law." Ameritech IB at 38. As Staff indicated in its initial brief, the tariff the Commission has ordered Ameritech to file in compliance with the *Section 13-801 Order* addressed numerous of Staff's concerns. Staff IB at 115, 117-118.

As noted in Section VI.A.4 above, Staff and Ameritech entered into a Stipulation filed with the Commission on August 23, 2002. The Stipulation provides that the "01-0614 Stipulation Issues" raised by Staff and Ameritech have been addressed adequately in ICC Docket No. 01-0614 and in the 01-0614 Compliance Tariff and, except as specifically provided in the Stipulation, need not be addressed again in this docket. Whether CLECs are entitled to purchase new combinations of "ordinarily combined" unbundled network elements ("New UNE Combination Usage and Accessibility Issues") and whether CLECs are entitled to purchase existing

combinations of unbundled network elements ("UNE Conversion Usage and Transparency Issues") are included within the 01-0614 Stipulation Issues.

The Stipulation reserves Staff's right to address the New UNE Combination Usage and Accessibility Issues and the UNE Conversion Usage and Transparency Issues if they are raised by other parties to this proceeding, and to raise the issue of Ameritech Illinois' compliance with the 01-0614 Compliance Tariff in Phase 2 of this proceeding. Therefore, in accordance with and subject to the terms and conditions of the Stipulation, Staff's current position is that the issues Staff raised with respect to the New UNE Combination Usage and Accessibility Issues and the UNE Conversion Usage and Transparency Issues have been addressed adequately in ICC Docket No. 01-0614 and in the 01-0614 Compliance Tariff, and need not be addressed again in this docket. Staff takes no position at this time on any New UNE Combination Usage and Accessibility Issues and UNE Conversion Usage and Transparency Issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

However, the Stipulation does not resolve cost, timeliness or quality issues for UNE conversions and new combinations, thus leaving some issues regarding combinations unresolved. The unresolved issues include Ameritech's failure to demonstrate that its rates are within a range that can reasonably be considered TELRIC compliant (or alternatively, to obtain Commission approval for final rates), Staff IB at 115-116, 118, and Ameritech's failure to prove that it has well defined, concrete, and binding terms and conditions that define provisioning intervals or quality standards for UNE combinations, in particular loop/transport combinations,

both those provided as pre-existing and new combinations. Staff IB at 116-117, 118-119. Ameritech has provided no comprehensive, systematic, or credible evidence to indicate that its interim UNE combination rates are reasonably within a range of TELRIC compliance and has not addressed the remaining Staff issues of rate clarity, provisioning intervals and provisioning quality.

With respect to the issue of rate clarity, Ameritech does make a general assertion that

> …with respect to pricing, Ameritech Illinois also has filed a compliance tariff, which was proposed by and agreed to with Staff, based on April 30, 2002 Order on Reopening in Docket 98-0396 (the TELRIC compliance case).

Ameritech IB at 39.

This statement does not directly address Staff's concerns. Further, the company fails to note that both Staff and interveners in Docket No. 98-0396 questioned both the clarity and application of Ameritech's rates, and the levels of it's combination rates. These outstanding issues, which remain unresolved, are to be, as ordered by the Commission, addressed in a follow up proceeding to Docket No. 98-0396. TELRIC II Order on Reopening at 11. Thus Ameritech's compliance filing has not yet, as the Commission recognized in the *TELRIC II Order on Reopening*, resolved all of the problems with Ameritech's UNE combination rates.

There is no doubt that Ameritech has complied with the Commission's directives in its *TELRIC II Order on Reopening*, nor that this filing has, at least in the interim, clarified some rate level and rate application issues, particularly those associated with the provision of UNE-P. However, as demonstrated by Staff in this proceeding, Ameritech's rates, in particular its rates for new loop/transport

combinations and reconfigurations of such combinations, are confused and appear far outside the range of rates that could reasonably be considered TELRIC compliant. Staff Ex. 3.0 at 127-130.

Therefore, although usage, transparency, and accessibility issues for UNE conversions and new combinations have been resolved pursuant to the Stipulation, subject to any tariff compliance issues raised in Phase 2, Ameritech has not resolved cost, timeliness and quality issues for UNE conversions and new combinations.

C. Operations Support Systems - Line Loss Notifications

The basis of Ameritech's argument is that it has worked hard to resolve problems with LLN notification, and that its efforts to cure the problem are sufficient to demonstrate that it "has developed sufficient electronic . . . and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions." Ameritech IB at 70. Ameritech is incorrect; it has not proven that the LLN problems are resolved. The repetitive nature of the LLN problems, coupled with the anticompetitive impact such problems cause CLECs, outweigh AI's promise to resolve the problems..

LLN problems have persisted since at least December 2000, and AI continues to implement system changes to resolve LLN problems, as recently as June 2002. These changes demonstrate that the LLN problems Ameritech experiences are systemic. Staff IB at 129-31. Staff acknowledges that AI should be able to resolve these problems, however the company has not proven that it has cured all problems and put in place sufficient safeguards to prevent new problems or

old problems from reoccurring. Only sustained performance over time and use will demonstrate if the changes AI has made to its OSS have cured all the problems. *See* Staff IB at 126. Therefore, Staff recommends that Ameritech continue to monitor line loss notifications on a daily basis, make the necessary changes to its line loss performance measure and revisit this issue in Phase 2 of this proceeding. This will allow AI sufficient time to address its LLN problems, modify Ameritech's performance measure which reports on LLNs and allow for continued review of Ameritech's performance in providing LLNs.

Ameritech argues that its "*efforts* to investigate and resolve the [LLN] issue . . . affects Ameritech Illinois' *prima facie* showing that it has 'developed sufficient electronic . . . and manual interfaces. . ." Ameritech IB at 70 (emphasis added). The standard of review is the preponderance of the evidence. Pennsylvania 271 Order at 4; Texas 271 Order, ¶48; New York 271 Order, ¶48; Michigan 271 Order, ¶45. Preponderance of the evidence generally means "the greater weight of evidence, evidence which is more convincing that the evidence which is offered in opposition to it."[11] Texas 271 Order, ¶48. AI's promise to continue investigating and resolving the LLN problems does not resolve the more global issue that the LLN problem, until cured, is discriminatory (*Order* Docket No. 02-0160 at 15-16), negatively affects the reputations of CLECs (Id. at 22), and causes end users to be double-billed. Staff IB at 130.

[11] Bell Atlantic New York Order, ¶48; Second BellSouth Louisiana Order, ¶59; Ameritech Michigan Order, ¶45.

The FCC has consistently relied upon actual performance -- the RBOC has to prove that it made changes to the OSS, and that those changes are effective prior to filing its section 271 application. Michigan 271 Order, ¶¶55, 179; Pennsylvania 271 Order, ¶52.; Texas 271 Order, ¶98 (FCC stating that "the most probative evidence that OSS functions are operationally ready is actual commercial usage." [citation omitted]). For example, in New Jersey, MorTel and AT&T complained that Verizon's order completion notices were not timely. New Jersey 271 Order, ¶110. Verizon proved that its order completion notices were compliant based on the performance measures metrics from November, 2001 through March, 2002. Id., ¶111. AI has failed to provide similar evidence, but AI does acknowledge that it implemented changes to the LLN system, as recently as June 2002. The timing of these changes precluded AI from presenting any evidence at the hearing proving that the changes it implemented has cured the LLN problems. Staff IB at 129-31. Moreover, the evidence provided by the CLECs and Staff prove that Ameritech's LLN systems have (i) experienced numerous problems since December 2000 (Staff IB at 128) requiring numerous changes (Id. at 129) (ii) required changes that were so recent that evidence could not be provided to demonstrate that the problems have been cured (Id. at 128-29), (iii) negatively impacted, potentially. 83 CLECs (Staff / Cottrell Cross Ex. 22), (iv) resulted in harm to CLECs' reputation (Staff IB at 127) and double-billing of end users. Id. at 130.

In this phase, AI is essentially asking the Commission to accept its promise that its cross-functional team will remain in place until the LLN problem is resolved. Ameritech IB at 69. The Commission should reject this argument, like the FCC has

in the *Michigan 271 Order*. In the *Michigan 271 Order*, the FCC stated that it "will not consider commitments regarding future actions, particularly those made on reply, to demonstrate current compliance with the current checklist item." Michigan 271 Order, ¶¶179, 197 (stating that the FCC "cannot rely on a hypothetical analysis of Ameritech's future abilities in the face of actual evidence that calls into question its current capabilities."). The Commission should therefore reject Ameritech's promise to resolve the LLN problem, and demand AI demonstrate compliant performance at least by the closure of the record in Phase 2.

What is particularly instructive are the FCC findings, in the *Michigan 271 Order*, regarding double-billing. As far back as 1997, it appears that Ameritech Michigan experienced problems notifying carriers when an end user transferred from one carrier to another, and consequently the end user was double-billed. *See* Michigan 271Order, ¶200-03. These problems are similar to the double-billing problems Z-Tel, AT&T and WorldCom are experiencing in Illinois. Staff IB at 127-28. In addressing the double-billing issue, the FCC found double-billing to be

> compelling evidence that Ameritech's OSS for ordering and provisioning for resale services is not operationally ready, and therefore, Ameritech is not providing nondiscriminatory access to OSS functions. Ameritech should not be held to a standard of perfection in demonstrating that its OSS functions are operationally ready, we find that double-billing, as well as the problems associated with manual processing discussed above, constitute problems fundamental to Ameritech's ability to provide nondiscriminatory access to OSS functions. Although, based on the record before us, it is unclear whether the double-billing problem is a symptom of a larger systemic problem, we do find that, in and of itself, double-billing is a serious problem that has a direct impact on customers and, therefore, must be eliminated."

Michigan 271Order, ¶203.

Further, the FCC rejected preliminary data that Ameritech Michigan provided to explain "the extent of the problem and the impact of the changes it has made to correct the problem." Michigan 271 Order, ¶203. The FCC also found that "Ameritech cannot rehabilitate its deficient showing on [the double-billing] issue merely by elaborating further in its reply on the solutions it has implemented." Michigan 271Order, ¶203. Similarly, Ameritech's assertion in this proceeding that its cross-functional team has implemented a number of changes, and will remain in place until the problem is resolved, should be rejected. AI needs to provide data collected over a period of time that demonstrates that the LLN problems are resolved.[12] Due to the timing of the most recent change, that data is absent from this phase. *See* Staff IB at 130-31.

The FCC has accepted RBOC promises to perform in limited situations, such as when the CLEC does not rebut an RBOC's assertion, or when the RBOC's promise was "detailed, well developed, and subject to a prioritized time frame." Pennsylvania 271 Order, ¶62-63 (approving change management process). Ameritech has set no timeframe in which this problem will be cured; no party knows when this will be completed. Furthermore, this is not a construction project with a clear sequence of tasks that need to be performed to achieve a finished end product. This is a troubleshooting project, wherein one solution may generate new

[12] In Docket No. 02-0160, the Commission ordered the performance measure for LLN be modified. This needs to be done before measurements are taken, so that the data is correct and accurately reflects the Commission's order. Z-Tel Complaint Order at 24.

problems. Tr. at 1207-08 (Ameritech witness Cottrell explaining the cross0functional team.). Ameritech asserts that the cross-functional team will remain in place until the problems are resolved to the satisfaction of each state. Ameritech IB at 69. This assertion alone is an admission that the problem is not resolved, since AI has not come before the Commission to let them know of the resolution. Tr. at 1215-16 (indicating that AI has not yet had conversations on when to approach state commissions on the status of LLN and what "the next steps should be.")

Ameritech argues that, although there is uncertainty among the other parties as to "whether all LLN issues have been completely resolved for all time, that is not an issue here," and relies upon the *Texas* and *New Jersey 271 Orders*[13] for the premise that the "FCC does not require perfection, nor does it require that all corrective actions be complete and their results verified with certainty for any particular period of time prior to the application date." Ameritech IB at 70. Ameritech has taken the FCC's findings, stated above, out of context, and therefore are distinguishable from the LLN problem AI is experiencing.

Ameritech cites paragraph 284 of the *Texas 271 Order* as authority for its position that corrective actions do not need to be complete for it to demonstrate compliance. *Id*. AI misapplies the finding of that order. In the *Texas 271 Order*, the FCC found that the "performance data demonstrate[s] that SWBT processes competing carrier LSR's [local service requests] for xDSL-capable loops in a timely manner," Texas 271 Order, ¶288, and that the "performance data demonstrate[s]

[13] The issues addressed in those orders related to xDSL loop performance (*Texas 271 Order*), white page directory listings (*Texas 271 Order*), and notifiers regarding processing of orders (*New Jersey 271 Order*).

that in recent months, with the substantial implementation of these changes, competing carriers can order xDSL-capable loops in a timely manner." Id., ¶290. Therefore, the recent data that SWBT provided is what persuaded the FCC that the changes implemented in Texas were successful. AI has not provided such similar data in this case.

Ameritech also cites to the FCC's analysis of white pages listings in paragraph 358 of the *Texas 271 Order*. Ameritech IB at 70. The FCC's findings on that issue are also distinguishable from the LLN problem experienced here. In Texas, a few CLECs complained that customer listings did not appear in the white pages directory, or were "falling out", for no apparent reason. Texas 271 Order, ¶356. SWBT's reply to the CLECs was that the white pages remain unchanged unless the CLEC submits a directory service request form; the CLECs did not rebut this statement. Id. Therefore, the FCC concluded that "there is no evidence to support the difficulties some competing carriers may have encountered. . .[,]" and that "it appears likely that competing carriers' perception that listings are "falling out" may reflect misunderstanding or miscommunications between carriers rather than actual failure to list customers . . [.]" Id., ¶358. The white pages issue is markedly different from the issue at hand in this proceeding. There is no misunderstanding between AI and the CLECs about the LLN problem. The CLECs have contacted AI about the problems and they have installed a cross-functional team to correct problems and monitor the process. Staff IB at 129-30. Further, more than one CLEC was affected by this problem. As many as 83 CLECs might potentially be effected by the LLN problem. Staff / Cottrell Cross Exhibit 22.

Likewise, in the New Jersey 271 proceeding, CLECs complained that Verizon was not providing accurate and timely order processing notifiers. New Jersey 271 Order, ¶93. An order processing notifier "inform[s] competitors of activities that an incumbent has initiated or completed at the request of the competing carrier." Id. The order processing notifiers issue is not relevant to the instant case, since the problems identified by the FCC were related to a misinterpretation of standards[14] and was supported by the fact that no other CLEC experienced the problem[15]. In the instant case, there are a number of carriers complaining about LLN problems, and to prevent a misinterpretation of standards, Ameritech needs to demonstrate compliance with the redesigned standard (performance measure MI13), since the Commission, in the *Z-Tel Complaint Order*, found the current performance measure inadequately measures LLN failures. Z-Tel Complaint Order at 24.

Finally, Ameritech incorrectly asserts that "the process for issuing LLNs is nondiscriminatory." Ameritech IB at 65. This is a bold assertion in light of the Commission finding in the *Z-Tel Complaint Order* that Ameritech provides LLN to Z-Tel in a discriminatory fashion. Z-Tel Complaint Order at 15-17. Ameritech has not complied with all of the remedies ordered by the Commission in the *Z-Tel Complaint Order*. Staff IB at 133-34.

[14] The FCC stated that "it appears that much of the remaining gap between the performance results reported by Verizon and the performance results generated by MetTel [sic] arise from an apparent disagreement over the application of various aspects of the Carrier-to-Carrier Guidelines." New Jersey 271 Order, ¶95.

[15] The FCC found that "the fact that no other company questions whether Verizon's performance data related to the timeliness and accuracy of Verizon's notifier data gives us additional assurance that such data are reliable." New Jersey 271 Order, ¶96.

D. Network Interface Devices

Ameritech incorrectly argues that network interface devices ("NIDs") are part of the local loop, and they are not. The FCC has clearly designated it as a network element to be unbundled. 47 CFR 51.319(b); UNE Remand Order, ¶ 235 (stating "We decline to adopt parties' proposals to include the NID in the definition of the loop."). Therefore, it is to be analyzed under the nondiscriminatory rules for Checklist Item 2 – unbundled network elements, and not Checklist Item 4, as Ameritech argues. Checklist item 2 evaluates UNEs to see if they are provided in a nondiscriminatory manner. Texas 271 Order, ¶91, and not the standards under Checklist Item 4.

Ameritech incorrectly argues that it allows access to NIDs in a nondiscriminatory manner. Ameritech IB at 105. In the UNE Remand Order, the FCC found access to NIDs vitally important to competition, so it made the NID a UNE. 47 CFR §51.319; UNE Remand Order, ¶¶230-40. The FCC stated that "we find that the availability of unbundled NIDs will accelerate the development of alternative networks, because it will allow requesting carriers efficiently to connect their facilities with the incumbent's loop plant." UNE Remand Order, ¶240.

Ameritech has NIDs that are inside a building, or are completely absent from a building, Tr. at 781-82, and does not intend to install those NIDs by the end of 2002, Tr. at 784. NIDS that are inside, or are absent, prevent CLECs from being able to connect. In light of the FCC's unbundling of NIDs, AI's action results in an anticompetitive impact on CLECs. Increased competition, of course, inherently brings more competitors into the market, allowing customers to switch providers, and

creating a need for the new providers to access the NID. Clearly, competition is most easily accomplished by placing the NID on the outside of the building.

The Commission, in Docket Nos. 86-0278 and 94-0431, stated that external NIDs need to be installed on all new construction and all old installations that do not have a NID. Order, Docket No. 86-0278 at 5; Order, Docket No. 94-0431 at 4. Not providing a UNE as ordered by the Commission is a *per se* violation of the order, and therefore, a discriminatory provision of NIDs to CLECs. Noncompliance with the order has a discriminatory impact on CLECs, because it deprives them of access to NIDs that they would have had if AI complied with the Commission's order.

E. Pricing

1. TELRIC Compliance

Ameritech argues that its rates are TELRIC-compliant. *See* Ameritech IB at 39, *et seq*. The company contends that its UNE rates are significantly lower than those prevailing in certain other states. Id. at 41-43. Ameritech further asserts that inquiry into the company's future rates is not proper at this stage, and that the Staff's UNE rate cap proposal should be rejected. Id. at 43-45. These contentions do not bear scrutiny.

Ameritech's comparison of its loop rates to rates in several other states, *see* Ameritech IB at 43, table 3 – in all cases, states that Ameritech does not serve – is irrelevant[16], based on its own arguments that rates must be based on its own costs.

[16] It is difficult to compare rates for UNEs across states. Staff Ex. 23.0 at 14-15. Demographic, cost, and regulatory environments that affect these rates vary considerably from state to state. Id. The Congress and FCC acknowledged this reality when they left it to the state public utility (continued…)

See Ameritech IB at 198 (stating that "rates [must] be right – that is, based on cost.") If Ameritech's loop rates are indeed low compared to those in other states, it follows that its loop costs are low compared to other states. What is clear is that, to the extent that Ameritech's UNE rates are low, this is not in any way attributable to Ameritech, since the Commission has repeatedly found that Ameritech has included costs in its studies that improperly inflate rates. *See, e.g.*, TELRIC II Order at 40-42 (Commission found that Ameritech's modeled costs underlying its proposed non-recurring charges for UNEs were not forward looking, "contain[ed] numerous flaws" and other "glaring omissions," all of which led to non-recurring charges that were "seriously inflated[,]" and accordingly rejected Ameritech's cost studies as "seriously flawed."); TELRIC II Order at 65-66 (Commission found that Ameritech, when directed to file rates for ULS-IST "reasonably comparable" to Texas rates, instead filed rates 16 times higher than Texas rates, and further improperly included usage-sensitive switching charges, in "blatant violation" of Commission orders); TELRIC 2000 Order, ¶¶ 5, 12-13 (Commission rejects yet another effort by Ameritech to impose a usage-sensitive unbundled local switching rate, noting that Ameritech had presented no evidence whatever that would require the Commission to depart from its long-held conclusion, supported by the FCC, that costs associated with the switch are almost entirely usage-**in**sensitive, and hence should be offered at a flat rate); TELRIC 2000 Order, ¶82, *et seq.* (Commission found that Ameritech's cost studies contain "numerous flaws that result in inflated rates"); Line Sharing Initial Order at 86 (Commission

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commissions to establish rates for UNEs under the FCC's TELRIC guidelines. 47 U.S.C. § 252(d)(1); s*ee, also, e.g.*, First Report and Order, ¶¶632, 693.

rejected Ameritech's efforts to recover 50% of loop cost from HFPL, noting that Ameritech presented no evidence that it was not already recovering 100% of its costs from the voice portion); Collocation Tariff Order at 255 *et seq.* (Commission determined that Ameritech had imposed discriminatory "special construction" charges upon competitors seeking to purchase UNEs from Ameritech.) This is in addition to the glaring inconsistencies in cost development that have caused, amongst other things, sub-loop rates to exceed loop rates in the state. Staff IB at 146, *et seq*. To the extent that Ameritech's UNE rates are low, this is because the Commission has rejected the company's repeated attempts to improperly inflate its costs.

Moreover, as noted in the Staff's initial brief, a comparison of Ameritech's Illinois rates to its rates in other Ameritech states – certainly the most apt comparison (given the similarities in rate structures in Ameritech's Illinois and Michigan territories, the rates in the two states lend themselves to comparison. Staff Ex. 23.0, Sched. 1)[17]. – reveals that Ameritech's Illinois rate structure is curious, to say the least. Ameritech's Illinois rates compare *unfavorably* with its rates in Michigan. Staff Ex. 23.0 at 14-15; *see also* Ameritech Sched. SJA-3; Tr. at 1496. Of the 92 comparable rates, 67 (73%) are higher in Illinois. Staff Ex. 23.0 at 15. Indeed, as Ameritech witness Scott Alexander conceded, most Illinois subloop rates are higher than their Wisconsin counterparts as well. Tr. at 1496. Accordingly, it is

[17] Schedule 1 to Staff Exhibit 23.0 is such a comparison, and shows that Illinois rates for dark fiber, sub-loops, and CNAM queries are generally higher than their counterparts in Michigan.

difficult for Ameritech to argue that its rates are indeed low in Illinois compared to other Ameritech states.

Ameritech's arguments that the potential for future rate changes should not be considered should be rejected. This record reveals precious little to the Commission regarding Ameritech's future rates, precisely because Ameritech's cost witness[18] was unable to give significant enlightenment about such future rates. What the record does reveal is that the use of Ameritech's LOOPCAT cost model – which Ameritech proposes to introduce in Illinois, Tr. at 336, et seq. – resulted in loop rates in Ohio more than doubling. Tr. at 313. Assuming that the use of the LOOPCAT model has similar results in Illinois – and Ameritech has presented no evidence that might assure the Commission that this would not be the case -- Ameritech's loop rate comparison would look like this:

State	**Loop Rate**
Illinois – Ameritech territory	**$19.62** (at a *minimum*)
Missouri	$15.18
Georgia	$16.51
Louisiana	$17.13
New Jersey	$9.52

This comparison is little short of chilling. All else equal, and assuming the use of LOOPCAT with results similar to those in Ohio, Ameritech's Illinois loop rates would *exceed* Louisiana rates by more than 14%, Georgia rates by more than 18%, Missouri rates by more than 29%, and New Jersey rates by 106%. Moreover, it

[18] This witness, Barbara Smith, who testified regarding the company's costs, is SBC Communications, Inc.'s Director – Cost Analysis and Regulatory, responsible for "supervis[ing] the production of cost studies, and analyz[ing] cost study results[.]" Ameritech Ex. 10.0, Attachment 1 (Smith Affidavit), ¶¶ 1-2.

appears that New Jersey[19] is the state most comparable to Illinois; the others are – empirically, at least – far smaller and more rural.

In other words, the Commission has no reason whatever to assume that Ameritech will not, subsequent to obtaining Section 271 authority (should it do so), attempt to dramatically increase its UNE rates. The Commission should consider this before, rather than after, Ameritech obtains Section 271 approval.

Ameritech further asserts that the fact the Commission has not approved a number of its UNE rates as TELRIC-compliant should not hinder its Section 271 approval. Ameritech IB at 48. This argument is deficient as well.

Ameritech contends that subloop and dark fiber UNEs are "relative newcomers to the unbundling scene[,]" Ameritech IB at 48, which is Ameritech-speak for an obligation that is now over 3 ½ years old. Ameritech further contends that no one has objected to, or requested a Commission investigation of, these rates. Id.

This, while true, is not particularly relevant. The parties potentially interested in these rates have, in all cases, been successfully challenging other Ameritech rates. *See, generally, e.g.*, TELRIC II Order; TELRIC 2000 Order, Line Sharing Order, Collocation Order; *see also* Proposed Order at 70, ICC Docket No. 98-0252/0335; 00-0764 (May 22, 2001); Post-Exceptions Proposed Order at 77 (October 4, 2001)(LFAM model withdrawn after ALJ recommended its rejection). This should not be construed – as Ameritech suggests it should – to mean that no

[19] By Ameritech's own admission, New Jersey loop rates are *already* lower than Ameritech's Illinois rates. Ameritech IB at 43, table 3.

CLEC is interested in subloops or dark fiber; rather it indicated that CLECs and the Staff consider rates for the UNE-P, unbundled local switching, shared transport, non-recurring charges, the HFPL, and other elements, to be relatively more important. Likewise, it means that Ameritech has a marked capacity for submitting cost studies that inflate costs, and must be extensively litigated.

In other words, Ameritech has simply not made the case that its rates are currently TELRIC compliant, and it has given the Commission ample reason to believe that the situation will not improve. The Commission should determine that Ameritech has failed to satisfy this item.

2. Rate Caps

Ameritech urges the Commission to reject the Staff's proposed UNE rate cap. Ameritech IB at 198. It argues that the federal Telecommunications Act "does not require that rates be fixed for any particular period of time: what it does require is that the rates be *right*, that is, based on cost." Id. Ameritech further contends that, in the event that it proposes changes in wholesale rates, interested parties will have an opportunity to contest those changes in Commission proceedings. Id. The one issue concerning rate caps that Ameritech clearly ignores is the necessity of a rate cap in Illinois to assure that, upon Section 271 approval, UNE elements remain TELRIC-compliant.

Ameritech is quite correct in one respect: rates should be based upon cost. The Staff does not challenge this requirement, and in fact endorses it. However, as the Staff noted in its initial brief, Ameritech's interpretation of "cost" has in the past been quite an expansive one. *See, generally*, Staff IB at 239, *et seq*. Specifically, the

Commission has repeatedly found that Ameritech has included costs in its studies that improperly inflate rates. *See, e.g.*, TELRIC II Order at 40-42 (Commission found that Ameritech's modeled costs underlying its proposed non-recurring charges for UNEs were not forward looking, "contain[ed] numerous flaws" and other "glaring omissions," all of which led to non-recurring charges that were "seriously inflated[,]" and accordingly rejected Ameritech's cost studies as "seriously flawed."); TELRIC II Order at 65-66 (Commission found that Ameritech, when directed to file rates for ULS-IST "reasonably comparable" to Texas rates, instead filed rates 16 times higher than Texas rates, and further improperly included usage-sensitive switching charges, in "blatant violation" of Commission orders); TELRIC 2000 Order, ¶¶ 5, 12-13 (Commission rejects yet another effort by Ameritech to impose a usage-sensitive unbundled local switching rate, noting that Ameritech had presented no evidence whatever that would require the Commission to depart from its long-held conclusion, supported by the FCC, that costs associated with the switch are almost entirely usage-**in**sensitive, and hence should be offered at a flat rate); TELRIC 2000 Order, ¶82, *et seq.* (Commission found that Ameritech's cost studies contain "numerous flaws that result in inflated rates"); Line Sharing Initial Order at 86 (Commission rejected Ameritech's efforts to recover 50% of loop cost from HFPL, noting that Ameritech presented no evidence that it was not already recovering 100% of its costs from the voice portion). This is in addition to the glaring inconsistencies in cost development that have caused, amongst other things, sub-loop rates to exceed loop rates in the state. Staff IB at 146, *et seq*. There are, needless to say, other such examples.

Moreover, as Ameritech itself notes, it proposes to introduce no fewer than six new cost models, which the company intends to use to develop costs for loops, switch ports and other switching inputs, transport, signaling, usage, and operator service. Tr. at 336, *et seq.* While Ameritech's cost witness was disconcertingly vague about what effect the introduction of these new models might have on rates, she was, under cross-examination, compelled to admit that one of these new models, the LOOPCAT model, resulted in Ohio loop rates more than doubling. Tr. at 313. This is all the evidence the Commission has – because it is all the evidence Ameritech saw fit to present – regarding the possible effects of these models, despite the fact that Ameritech's costs witness was SBC Communications, Inc.'s Director – Cost Analysis and Regulatory, responsible for "supervis[ing] the production of cost studies, and analyz[ing] cost study results". Ameritech Ex. 10.0, Attachment 1 (Smith Affidavit), ¶¶ 1-2.

In other words, Ameritech's conversion to the doctrine that wholesale rates be "right" is extremely recent, since its prior conduct would lead a disinterested observer to the conclusion that Ameritech's chief concern has been that wholesale rates be *high*, whether "right," or as the Commission has so often found, egregiously wrong. Moreover, a skeptic would perhaps conclude that Ameritech's devotion to "right" wholesale rates might not survive Section 271 approval, especially given the company's avowed intention of implementing six new cost models. Ameritech's zealous advocacy of cost-based wholesale rates should be viewed in this light.

Further, Ameritech's contention that parties aggrieved by Ameritech's forthcoming rate proposal will have recourse to this Commission, while true, is

disingenuous at best. As the Staff has convincingly shown, *see* Staff IB at 218, *et seq*., Ameritech has resisted, over a period of years, this Commission's directive that it provide ULS-ST at reasonable, cost-based rates and on reasonable terms and conditions. The fact that parties can, at great expense and over an extended period, litigate the propriety of Ameritech's rate proposals scarcely constitutes a useful remedy, especially when, as is so often the case in Illinois, Ameritech's rate proposals are, to put it charitably, unrealistic. Indeed, as is clear, numerous parties have spent years demonstrating – conclusively, as it happens – that Ameritech's inclusion of a usage-based element in ULS rates is improper. TELRIC II Order at 64-65; TELRIC 2000 Order, ¶¶ 12-15. It is not clear why this process should be repeated again in the near future.

The fact that competitive carriers have recourse available to them in the case of a new rate proposal is not in question. However, neither is the fact that such a process is costly and time-consuming. As the dominant carrier in its service territory, it is to Ameritech's advantage to continuously litigate its UNE rates – as it has done. The effect on competing carriers, however, is a drain on resources that could otherwise be employed in the marketplace. Further, UNE rates represent costs of production to CLECs. The uncertainty that re-litigation has the effect of introducing a high degree of business uncertainty into the market, thereby undermining the business plans of competitors. A five-year cap on wholesale rates is the only solution to this problem. Accordingly, the Commission should condition any favorable recommendation of Ameritech's Section 271 application on precisely such a cap.

VIII. CHECKLIST ITEM 4

In footnote 38 of its initial brief, Ameritech states that Staff now agrees that the company has met the checklist requirements of Checklist Item 4 with respect to the provisioning interval for the high frequency portion of the loop ("HFPL"). Ameritech IB at 115 n. 38. Staff agrees that Ameritech provisions HFPL in compliance with state law; however that is subject to "Ameritech Illinois submitting a tariff with language pertaining to the aforementioned issue revised to comply with the Commission's [Section 13-801 Order] (and Commission's approval of that tariff)." *See* Stipulation at 3.

IX. CHECKLIST ITEM 6 – UNBUNDLED LOCAL SWITCHING

A. Availability of Unbundled Local Switching On Cost Criteria

Ameritech asserts that its UNE switching rates are no longer an issue because the Commission set permanent rates in the *TELRIC 2000 Order*. Ameritech IB at 42. The *TELRIC 2000 Order* was entered less than two weeks before the filing of initial briefs in this proceeding, and that order found that Ameritech's rate structure for UNE switching was improper and that its existing UNE switching rates were not TELRIC compliant. *See* Staff IB at 142 – 143, 161 -162. The rates the Commission ordered Ameritech to adopt in the *TELRIC 2000 Order* were devised not by Ameritech, but by an AT&T/WorldCom witness (*TELRIC 2000 Order*, ¶16), and there is absolutely no evidence in this proceeding that Ameritech has implemented or complied with the July 12, 2002, TELRIC 2000 Order. Although Ameritech's actions have not resulted in TELRIC compliant rates, Staff does agree

that the Commission ordered Ameritech to implement UNE switching rates that were intended and designed to be TELRIC compliant based on the best evidence available. Thus, Staff recommends that the Commission find that Ameritech must demonstrate in Phase 2 of this proceeding that it has fully implemented and complied with the TELRIC 2000 Order before the Commission can give a positive recommendation to the FCC with respect to Ameritech's obligation to provision unbundled local switching at TELRIC compliant rates.

B. Secure Features

Ameritech asserts that it provides reasonable access to secure switch features through the BFR process, "a time tested, Commission approved way for Ameritech Illinois to respond to specialized requests from CLECs." Ameritech IB at 131-132. The support Ameritech provides for this assertion highlight Staff's concern on this issue.

First, Ameritech itself notes that according to the FCC the process it uses to provide secure features cannot be open ended. Ameritech IB at 132. In Docket No. 01-0614, the Commission identified as an area of concern the fact that Ameritech's BFR-OC process[20] is an open-ended process. *Section 13-801 Order* at ¶ 496 ("That is not to say that we do not perceive shortcomings in Ameritech's proposal, the greatest of which is the apparently open ended time frame to actually provision the combination requested through the BFR-OC process[.]" Ameritech's BFR process,

[20] The BFR-OC process refers to a bona fide request (BFR) process for ordinary combinations (OC) not specifically listed by their elements in Ameritech's tariff.

mirrors its BFR-OC process in this regard. Thus, if Ameritech is evaluated according whether or not its BFR process is "open ended" as Ameritech asserts it should be, then it fails to comply with Checklist Item 6.

Regarding Staff's concern that Ameritech has failed to justify that it will require time to do compatibility checks among features when its provisions a secure feature, Ameritech argues that Mr. Deere explained that such checks are necessary. Ameritech IB at 133. Staff does not dispute Mr. Deere's assertions. Rather Staff has explained that Mr. Deere has provided no evidence of how long such checks take or what other activities could justify the timelines associated with use of the BFR process. Staff Ex. 20.0 at 89.

Regarding Staff's concern that Ameritech double recovers costs if it charges CLECs for secure switch features, Ameritech argues that:

> Mr. Deere explained that there is no danger of double-recovery, however, because the cost models used in developing Ameritech Illinois' approved rates excluded inactive switch features.

Ameritech IB at 133.

Mr. Deere's testimony on this issue, is not, however, so clear. As noted by Ameritech Mr. Deere testified that:

> Since, by definition, secure features are features that Ameritech Illinois has not offered to its customers, these features were not on the list of most popular features and were not include in the cost studies.

Am. Ex. 5.2 at 22.

Mr. Deere subsequently clarified that secure features are activated on a switch-by-switch basis and therefore that Ameritech may be providing some secure features on some switches and not others. Tr. at 197-198. This certainly suggests

the possibility that his previous reasoning for asserting that double recovery is not occurring may be faulty. Subsequently, he indicated that double recovery was not occurring because "…the costs that are set up in the TELRIC are based on a model, they are not based on actual costs." Tr. at 198. Again, Mr. Deere's response lacks clarity and does not definitely put to rest Staff's concern. This uncertainty is compounded by Mr. Deere's testimony on two separate occasions that his response to Staff was based on his belief or the best of his knowledge, Ameritech Ex. 5.1 at 29, Tr. at 197, and that these beliefs and/or knowledge were not based on personal knowledge but on conversations with Ameritech's "cost people". Tr. at 197.

Staff believes that these issues can be addressed through increased monitoring of Ameritech's BFR process. As with provision of UNEs, Staff believes that through increased monitoring of the type ordered in *the Section 13-801 Order*, the Commission will not only be able to determine whether Ameritech's is provisioning secure features in accordance with Section 271 of the Act, but will also be able to determine whether the BFR process itself is an appropriate mechanism for provision. In the event the BFR proves inadequate the Commission can pursue remedial action.

As noted in Section VI.A.4 above, Staff and Ameritech entered into a Stipulation filed with the Commission on August 23, 2002. Pursuant to the Stipulation Ameritech agreed to amend, as expeditiously as possible but in no event later than September 6, 2002, its Bona Fide Request (BFR) tariff in accordance with and in the form of an attached schedule. These amendments require Ameritech to notify the Commission when requests for secure features are referred to the BFR

process, to notify the Commission of completion of each step of the process including notification of rates, terms, and conditions being offered to the carrier through the BFR process, and to notify the Commission when a request is rejected including notification of the grounds for rejection. Staff and Ameritech agreed that such changes will enable the Commission to adequately monitor Ameritech's UNE provisioning process, and that based upon such amendments to Ameritech Illinois' tariff the "BFR issues" raised by Staff in this docket have been resolved. The BFR issues, as defined and identified in the Stipulation, include Staff's concerns with the BFR process Ameritech uses to provision secure features (the "Secure Feature Issue").

The Stipulation reserves Staff's right to address the Secure Feature Issue if it is raised by other parties to this proceeding, and to raise the issue of Ameritech Illinois' compliance with its agreement and BFR tariff amendment in Phase 2 of this proceeding. Therefore, in accordance with and subject to the terms and conditions of the Stipulation, Staff's current position is that the issues Staff raised with respect to the Secure Feature Issue have been resolved by the Stipulation and Ameritech's agreement to amend its BFR tariff, and need not be addressed further in this docket. Staff takes no position at this time on ULS issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.

X. CHECKLIST ITEM 7 – 911 / DIRECTORY ASSISTANCE / OPERATOR SERVICES

A. OS/DA Branding

On page 143 of its initial brief, Ameritech refers to branding. "Branding" calls means that a CLEC customer that is accessing OS/DA services will hear an automated voice response that identifies the service as the CLEC's, and Ameritech's operators answering CLEC customers' calls identify themselves as if they were employees of the CLEC.

In Ameritech witness Jan Rogers' direct testimony, she states that as of the fourth quarter of 2001, Ameritech had refined its branding capability by utilizing information from its Line Information Database "("LIDB") which triggers the branding change much more quickly than previously employed methods. Ameritech Ex. 9.0 at 6. She further asserts that the issue raised by a CLEC during discussions with that CLEC, Ameritech Ex. 9.0 at 3, was not relevant, since "branding changes triggered by a subscriber's migration from one local exchange carrier to another are the same for Ameritech Illinois subscribers and CLEC subscribers." Ameritech Ex. 9.0 at 6.

B. AIN Routing of OS/DA Services

CLECs serving customers using Ameritech facilities must also be able to route OS/DA traffic to a third party platform, using customized routing. *See* New York 271 Order, n.186. (relying on the *Local Competition First Report and Order* for the proposition that BOCs are "to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide

such services; or chooses a third party to provide such services.") Ameritech provides this since the AIN method of customized routing Ameritech provides has been tested and is a proven method. Additionally, it appears that the custom routing requested by WorldCom may not operate in the current Ameritech network.

In its initial brief, WorldCom states that it would prefer "OS/DA calls to be routed to WorldCom's OS/DA platforms or the OS/DA platforms of third party provider." WorldCom IB at 34. Although not stated in WorldCom's initial brief, WorldCom witness Caputo, in his direct testimony, maintains that AI fails to meet the requirement of this checklist item because it does not allow WorldCom to route its OS/DA traffic through the use of Feature Group-D trunks. WorldCom Ex. 5.0 at 7-9. However, while Mr. Caputo maintains that AI's parent, SBC Communications ("SBC"), is well aware of WorldCom's desire to route OS/DA calls via Feature Group-D trunks, he cites no instance where WorldCom has requested this service from Ameritech. Ameritech Ex. 5.2 at 16.

Ameritech witness Deere states that AI meets this requirement by offering this capability in two different forms. Customized routing may be done via Ameritech's AIN or through the use of Line Class Codes ("LCC"). Ameritech Ex. 5.1 at 23. The AIN method of customized routing used by Ameritech is the same method used to route local calls over shared transport in Illinois, therefore, has been tested and is a proven method. *See* Ameritech Ex. 5.1 at 25 (Ameritech witness Deere stating that the AIN method of customized routing "…is the same programming that is used in Illinois to route local calls over shared transport. Therefore, this program was tested in the lab and in the field before being deployed for actual use.")

Additionally, there is a significant question regarding the feasibility of implementing OS/DA access via the use of Feature Group-D trunks. Based on testimony that Mr. Caputo offered the California Public Utilities Commission ("CPUC") in March 2001,[21] it appears that not all switching equipment types can successfully manage this traffic. In that testimony, Mr. Caputo states that there were problems routing OS traffic through Nortel switches. This problem is significant, since approximately 45% of AI's switches are manufactured by Nortel, and therefore a substantial portion of the network could not be used for the customized routing requested by WorldCom.

Accordingly, the foregoing analysis demonstrates that AI provides branding and routing of OS/DA services in a nondiscriminatory manner. While there is disagreement between AI and CLECs over the timeliness of OS/DA branding when a customer migrates its service from one provider to another, as well as which is the preferred method for customized routing to third party OS/DA providers, Staff believes that Ameritech fulfills its obligations under Checklist Item 7, as they pertain to non-rate OS/DA access.

XI. CHECKLIST ITEM 10 – DATABASES AND ASSOCIATED SIGNALING

A. Calling Name Databases – Parity of Service

RCN states that Ameritech has not responded to its repeated attempts to resolve this issue, and that RCN cannot start to resolve the problems with third-party

[21] California Public Utilities Commission, Application 01-01-010 "Application for Pacific Bell for arbitration of an interconnection agreement with MCI Metro" p. 861-866, March 26, 2001.

database providers without additional information from Ameritech. RCN IB at 29-30. As Staff stated in its initial brief, this problem has an anti-competitive impact on RCN, (and it is likely that other carriers, or prospective carriers, who will be interested in using this feature will be impacted unless resolved) and that it can only be resolved through a coordinated effort of Ameritech and the CLEC experiencing the problem. Staff IB at 175-76. Based on Staff's review, it is unclear that the problem is completely within Ameritech's control, however, it is clear that it has an anti-competitive effect on Ameritech's competitors. Id. Since Ameritech has the burden of proving that the market is open for competitors to operate in parity, and to ensure that AI's local market is adequately open for CLECs to provide service to end users, this anti-competitive effect needs to be resolved in the near future. In light of this information, and RCN's recommendation to the Commission, RCN IB at 30, Staff is slightly modifying its recommendation to the Commission.

While Staff continues to believe that Ameritech has met its burden of proof in demonstrating that CLECs can access CNAM databases at parity with the way in which Ameritech accesses these databases, it is important to ensure that the CNAM database problem noted by RCN is resolved. Thus, Staff recommends that the Commission condition its favorable recommendation to the FCC on Ameritech making a commitment to resolve this issue. Therefore, this issue should be addressed again in Phase 2. This will allow Ameritech to either provide evidence that it has resolved this problem, or to allow the CLECs and AI to propose to the Commission a timeline, or plan, by which this problem can be resolved.

XII. CHECKLIST ITEM 13 – RECIPROCAL COMPENSATION

As demonstration of compliance with Checklist Item 13, Ameritech asserts that "[t]here is no dispute as to the facts that demonstrate checklist compliance" and submits three "facts" as support for its statement. Ameritech IB at 175. First, the company states:

> Ameritech Illinois has entered into reciprocal compensation arrangements as part of legally binding interconnection agreements and an effective tariff, and it is paying reciprocal compensation under those arrangements (Am. Ill. Ex. 1.0 (Alexander Direct), Sch. SJA-1, 115-116);

Ameritech IB at 175-176.

In offering this statement, Ameritech cites to Ameritech Ex. 1.0, Sch. SJA-1, ¶¶ 115 –116, the draft affidavit submitted by Scott J. Alexander. However, Ex. 1.0, Sch. SJA-1, ¶¶ 115 –116 does not contain an acceptable showing of evidence in this proceeding.

In Ameritech Ex. 1.0, Sch. SJA-1, ¶¶ 115 –116, Mr. Alexander, cites two pieces of evidence to demonstrate that Ameritech has legally binding rates, terms, and conditions for reciprocal compensation, Attachment A to Ameritech Ex. 1.0, Sch. SJA-1 and Ameritech End Office Integration Tariff, ILL.C.C. No. 20, Part 23, Section 2. Attachment A that Mr. Alexander refers to contains a list of 11 interconnection agreements and a general reference that suggests that, perhaps, 1 or more of these interconnection agreements contain reciprocal compensation provisions upon which Ameritech is relying to demonstrate its compliance with its Checklist Item 13 obligations. According to Mr. Alexander's own testimony in this proceeding, this general reference to 13 agreements, which does not specify which agreements contain the terms or conditions that Ameritech is asserting are compliant, is deficient

as a showing of evidence in this proceeding. *See* Tr. at 1515. Regarding Ameritech's reliance on its tariff, Ameritech is currently taking the position before this Commission that "…under the Act, a state commission may not utilize a tariff-based framework to implement carrier's obligations to each other with respect to matters covered by Section 251 of the Act." Ameritech Application for Rehearing of the *Section 13-801 Order* at 36 (July 11, 2002). Thus, if the company's position is accepted, Ameritech's reliance on its tariff is not an acceptable showing of evidence in this proceeding. Consequently, even according to Ameritech standards, Sch. SJA-1, ¶¶ 115 –116 does not contain an acceptable showing of evidence in this proceeding.

Despite the fact that Ameritech has not provided an acceptable showing of evidence, Staff does not dispute that Ameritech has entered into reciprocal compensation arrangements and it is paying reciprocal compensation under those arrangements. Staff does not dispute this information, but disagrees with Ameritech's interpretation of its relevance. While this information does demonstrate that, in some circumstances, Ameritech does not flatly refuse to enter into reciprocal compensation arrangements, it does not provide any evidence that the arrangements that Ameritech enters into contain Section 271 compliant rates, terms, and conditions. Thus, it is not only disputable, but also clear that Ameritech's first statement of "fact" does not suffice to demonstrate Ameritech's compliance with Checklist Item 13.

Second, Ameritech states

> Ameritech Illinois' agreements provide for reciprocal compensation at least to the extent required by the Act (id. 115)

Ameritech IB at 175.

Staff does not understand the relevance of Ameritech's second statement of "fact." In making this statement, Ameritech again references Ameritech Ex. 1.0, Sch. SJA-1 ¶ 115. In Ameritech Ex. 1.0, Sch. SJA-1 ¶ 115, Mr. Alexander states:

> In accordance with 47 U.S.C. § 271(c)(2)(B)(xiii), Ameritech is required to provide reciprocal compensation arrangements in accordance with § 252(d)(2) of the Act, which governs the charges for transport and termination of traffic that is subject to the reciprocal compensation requirement of § 251(b)(5). Ameritech's approved interconnection agreements and effective tariff contain clearly defined arrangements describing Ameritech's obligation to compensate CLECs in accordance with §252(d)(2). Under those arrangements, Ameritech is compensating CLECs for the transport and termination of traffic to the CLECs' networks that is subject to reciprocal compensation pursuant to the ICC's orders and the FCC's rules (subject to negotiation or a regulatory or judicial determination as to the effect of the FCC's April 27, 2001 Order on Remand in CC Docket Nos. 96-98 and 99-68). In addition, Ameritech makes undisputed payments in a timely fashion. Footnotes omitted.

Thus, in the passage Ameritech cites, Mr. Alexander merely asserts his belief that Ameritech complies with its Checklist Item 13 obligations and offers no specific evidence of such compliance. An assertion that Ameritech complies with Checklist Item 13 does not represent an indisputable fact that indicates Ameritech does indeed comply with Checklist Item 13.

While Ameritech's second statement of "fact" does not provide evidence that Ameritech complies with Checklist Item 13, it appears Ameritech may not have submitted the fact as direct evidence of compliance. Ameritech's statement asserts that Ameritech is entering reciprocal compensation arrangements "…at least to the extent required by the Act" implying that its requirements under the Act are limited. As noted by Dr. Zolnierek, Ameritech appears to take the position that because reciprocal compensation arrangements for ISP-bound and non-ISP bound traffic are

inextricably intertwined, and because ISP-bound traffic rates are not a consideration for Section 271 approval, it must follow that local traffic rates, terms, and conditions, particularly those impacted by the FCC's ISP-Bound Compensation Order, are outside the scope of this proceeding. Staff Ex. 20.0 at 27. This position would read Checklist Item 13 out of Section 271 of 1996 Act. It is not only disputable, but clear that Ameritech's position on the extent of its requirements under Checklist Item 13 is inconsistent with FCC rules, and, therefore, with Ameritech's requirements under Checklist Item 13.

Finally Ameritech states:

> The Commission has approved rates for reciprocal compensation, and has found them consistent with TELRIC cost principles and with section 252(d)(2) (id. 116)

Ameritech IB at 175-176.

Staff presumes the reciprocal compensation rates Ameritech is referring to are those found in its End Office Integration Tariff, ILL.C.C. No. 20, Part 23, Section 2, because the Commission has not issued any decision finding reciprocal compensation rates that depart from those reciprocal compensation rates included in its tariffs to be consistent with TELRIC cost principles and because Ameritech itself identifies its tariffed rates as its Commission approved rates. Ameritech IB at 177. Given that assumption, Ameritech's third statement is deficient as a demonstration of compliance for two reasons. First, since the FCC's ISP-Compensation Order became effective, Ameritech has not agreed to include the reciprocal compensation rates contained in its tariff in its interconnection agreements with CLECs. Ameritech does not dispute this fact. And they cannot dispute it because, as Dr. Zolnierek testified, "…when XO requested these tariffed rates, Ameritech refused to provide

them, forcing XO to submit an arbitration petition to the Commission." Staff Ex. 20.0 at 95; *see also* Staff Ex. 3.0 at 161-162. Second, as noted by Staff Witness Zolnierek, Ameritech has, in this proceeding and others, testified that its current tariffed reciprocal compensation rates are not cost based and are therefore not compliant with TELRIC principles. Staff Ex. 3.0 at 162; 20.0 at 92-94. Current evidence supports this notion. Staff Ex. 3.0 at 154.

A careful examination of the evidence in this proceeding demonstrates that Ameritech's assertion that "[t]here is no dispute as to the facts that demonstrate checklist compliance" is simply wrong. Ameritech has not demonstrated that it complies with Checklist Item 13 and, a preponderance of the evidence submitted in this proceeding proves that Ameritech's reciprocal compensation policies not only result in non-compliance with Checklist Item 13 but also in non-compliance with Checklist Item 1.

A. Reciprocal Compensation Rates

Regarding its adoption of a bifurcated rate structure Ameritech (1) implies that it offers bifurcated rates only as an alternative to its tariffed reciprocal compensation rates, (2) implies that its bifurcated rates are cost based, (3) implies that its bifurcated rate structure is consistent with the FCC's *ISP-Bound Traffic Order*, and (4) implies that the Commission has approved its bifurcated rate structure. *See* Ameritech IB at 179-81. The Commission should not be misled by these implications. Ameritech has implemented the FCC's *ISP-Bound Traffic Order* in a manner that violates both the letter and the spirit of that order, and this has resulted in non-compliance with the requirements of Checklist Items 1 and 13.

Ameritech states that it "…offers CLECs an alternative rate structure through its GIA." Ameritech IB at 180. This statement implies that Ameritech offers its bifurcated rate structure as an alternative to its current tariffed rates. This, however, is incorrect. As explained above, Ameritech does not permit carriers to adopt its current tariffed reciprocal compensation rates in their interconnection agreements. Thus, Ameritech is not offering its bifurcated rate structure as an alternative to its current tariffed rates.

The FCC's ISP-Bound Compensation Order specifically directs that

> For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts.

ISP-Bound Traffic Order, ¶89. Ameritech has not elected to exchange ISP-bound traffic subject to the FCC's reciprocal compensation rates. Ameritech IB at 177. Ameritech states very specifically that its "…effective tariff reflects the Commission-approved rates for now." Ameritech IB at 177. Despite these facts, Ameritech refuses to permit carriers to include in their interconnection agreements with the company the rates the company considers to be Commission-approved either for the exchange of local or ISP-bound traffic. This directly and unambiguously violates the explicit direction of the FCC's *ISP-Bound Traffic Order*.

Ameritech provides a description of the manner in which it incurs costs and how this cost structure has led the company to develop a new reciprocal compensation rate structure. Ameritech IB at 179-180. Ameritech then cites FCC reasoning to suggest that its current tariffed unitary rate structure is not reflective of the costs incurred to provide service. Ameritech IB at 180. The implication is that Ameritech's

bifurcated rates are more reflective of cost then its current tariffed rates. The Commission should not reach this conclusion for several reasons.

First, as Ameritech states, its current set-up costs were melded into its current per-minute rate. Ameritech IB at 179. Ameritech's basis for "de-melding" is that "…the application of the unitary rate structure to Internet traffic would result in a windfall – 'compensation' that was several times greater than costs incurred - to the receiving carrier." Ameritech IB at 180. Thus, Ameritech concedes that its bifurcated rate structure has been adopted for the purposes of addressing compensation for ISP-bound traffic. That is, Ameritech has revised its local reciprocal compensation rate structure, the structure that applies to non-ISP bound traffic in order to address ISP-bound traffic compensation issues. There is no clearer evidence that Ameritech's attempt to impose its own solution to the problems it perceives with ISP-bound traffic compensation have had a direct effect on its compliance with the local reciprocal compensation provisions of Checklist Item 13.

Ameritech then implies that its unilateral imposition of new reciprocal rates for both ISP-bound and non-ISP-bound traffic is consistent with the FCC's *ISP-Bound Traffic Order* stating that the "ISP Compensation Order endorses the concept [of bifurcated rates] as a potential solution to the windfalls some CLECs obtained under the unitary system." Ameritech IB at 181. Ameritech states:

> In the ISP Compensation Order the FCC allowed incumbent LECs to elect *out* of reciprocal compensation rates applied by state commissions to ISP-bound traffic and into a series of rate "caps" designed as a transitional measure while the FCC considers permanent rules for compensation on such traffic.

Ameritech IB at 176-177.

Thus, Ameritech specifically recognizes that the FCC has indicated how they can elect out of reciprocal compensation rates applied by state commission to ISP-bound traffic. Ameritech has not elected to follow the FCC path. Ameritech has, however, elected out of reciprocal compensation rates applied by this Commission. As explained by the company, it has done so by changing the reciprocal compensation structure in Illinois for both ISP-bound and local reciprocal compensation rates to a bifurcated structure. In testimony, Ameritech's reciprocal compensation witness has testified that Ameritech's bifurcated rate structure is inconsistent with the method the FCC has prescribed for Ameritech to elect out of reciprocal compensation rates applied by this Commission to ISP-bound traffic. Tr. at 1532. Thus, Ameritech has elected out of both local and ISP-bound reciprocal compensation rates, but the unilaterally derived alternative opt-out path taken by the company is, according to Ameritech's own witness, inconsistent with the FCC's prescription for opt-out.

Ameritech then states that its bifurcated rate structure uses "exactly the same set-up and durations costs that this Commission approved…[,]" Ameritech IB at 180, implying that rates are Commission approved. They are not. Ameritech Witness Johnson has specifically acknowledged that "[t]his Commission has traditionally addressed service cost model issues in rate proceedings and that is the most efficient approach." Ameritech Ex. 15.0 at 30. Ameritech has not submitted a tariff containing its bifurcated rates at the Commission and the Commission has not found Ameritech's revised rates to be TELRIC compliant. As explained above, Ameritech has argued that its current tariffed local reciprocal compensation rates are not TELRIC compliant. However, it has not sought Commission approval for rates that it

considers TELRIC compliant and in fact offers these rates as proof of compliance with Checklist Item 13. Ameritech IB at 176 *citing* Ameritech Ex. 1.0, Schedule SJA-1 at ¶ 116. The Commission has no choice, but to conclude that Ameritech does not have TELRIC compliant reciprocal compensation rates and, therefore, that it does not currently comply with Checklist Item 13.

B. Failure to Allow Opt-In to Reciprocal Compensation Rates

In addressing the issue of "Opt-In Exemption", Ameritech consolidates two separate issues raised by Staff: (1) the Checklist Item 13 issue that Ameritech does not permit carriers to opt-in, or adopt without protracted negotiation or arbitration, local reciprocal compensation rates, terms, and conditions that other carriers currently have in their interconnection agreements with Ameritech and (2) the Checklist Item 1 issue that Ameritech does not permit carriers to opt-in, or adopt without protracted negotiation or arbitration, reciprocal compensation rates, terms, and conditions that Ameritech must offer under both federal and state rules and regulations. The later issue has been addressed above under Checklist Item 1, the former will be addressed here under Checklist Item 13.

Ameritech states that the FCC

> Has expressly held that the Act's "opt-in" provisions do not apply to terms and conditions related to compensation for ISP-bound traffic, to prevent new carriers from receiving such compensation and to serve as a prelude to phasing it out entirely.

Ameritech IB at 179.

Thus, to the extent the FCC permits Ameritech to deny a carrier opt-in to reciprocal compensation rates (which Staff addresses above), it permits them to deny carriers

rates for ISP-bound traffic. Ameritech, however, denies carriers the ability to opt-in to local reciprocal compensation rates included in other carrier's contracts, including those rates included in contracts that match Ameritech's current tariffed rates.

Ameritech argues that its local reciprocal compensation opt-in prohibition is logical because "the Commission has ordered Ameritech to pay reciprocal compensation on ISP-bound traffic under the provisions of several existing interconnection agreement" and that "…it is hard to see how Staff could contend that those provisions are not related to ISP-bound traffic." Ameritech IB at 179. This argument is flawed for two reasons. First, the there is no reason that Ameritech cannot exchange local traffic according to the same rates, terms, and conditions as it has done in the past and continues to do with numerous carriers in this state. Certainly, Ameritech could provide alternative terms for the exchange of ISP-bound traffic, without altering the rates, terms, and conditions for the exchange of local traffic. Second, as explained under Checklist Item 1 above, according to the FCC's *ISP-Bound Traffic Order*, Ameritech has not elected the FCC's rate caps and therefore must pay carriers reciprocal compensation on ISP-bound traffic under the same rates, terms, and conditions as it currently does in existing interconnection agreements. Therefore, based on the FCC's ruling concerning CLEC opt-in rights, Ameritech takes the position that it is permitted to deny carriers the ability to opt-in to local and ISP-bound reciprocal compensation rates, terms, and conditions that it must offer to provide under current state and federal rules independent of carriers opt-in rights. Ameritech cannot exploit what it apparently perceives to be a legal loophole that arises from FCC's *ISP-Bound Traffic Order* without violating the explicit

provisions of the order itself, and both state and federal rules and regulations. Ameritech has done so anyway. In so doing the company fails to provide non-discriminatory access to local reciprocal compensation rates, terms, and conditions that carriers have in their existing contracts, fails to provide reciprocal compensation rates, terms, and conditions that this Commission has ordered them to provide in their tariff, and fails to provide reciprocal compensation rates, terms, and conditions that the FCC's *ISP-Bound Traffic Order* requires them to provide. Ameritech has therefore unquestionably failed to satisfy Checklist Item 13.

XIII. PUBLIC INTEREST

A. The Public Interest Requires that Ameritech Illinois Offer Stand-Alone DSL Transport Directly to End Users and that It Cease Its Practice of Bundling DSL and Voice Services

Staff demonstrated that it is in the public interest for the Commission to require Ameritech Illinois to offer DSL transport directly to end users on a stand-alone basis. Staff IB at 234-36; Staff Ex. 10.0 at 22-34; Staff Ex. 24.0 at 37-49. Staff also demonstrated that it is in the public interest for the Commission to order Ameritech to eliminate the company's practice of bundling DSL and voice services. Staff IB at 236-37; Staff Ex. 10.0 (at 34-36; Staff Ex. 24.0 at 49-53.

Ameritech advances several reasons in opposition, none of which has merit. Ameritech first argues that "the market does not *want* stand-alone DSL transport; end users buy integrated 'Internet access service' from ISPs that combine high-speed transport with Internet access services." Ameritech IB at 200 (emphasis in

original). According to Ameritech Illinois, "[u]nder Staff's view end users would buy 'high-speed transport' from one provider and 'Internet access' from a second provider: giving up the convenience of dealing with a single provider." Id. Ameritech Illinois, however, provides no evidence—empirical or otherwise—to support its claim that end users do not *want* stand-alone DSL transport. Clearly, Ameritech Illinois' (through AADS) failure to offer or provide DSL transport on a stand-alone basis, in and of itself, provides no support for the conclusion that end users do not want stand-alone DSL transport. In fact, at least two RBOCs, Verizon and Qwest, apparently disagree with Ameritech Illinois' view, as they offer stand-alone DSL transport to end users. Staff IB at 236. As Staff explained, Ameritech Illinois' refusal to provide stand-alone DSL transport is merely a marketing strategy, a strategy that circumvents the resale requirements of Section 251(c)(4) of the 1996 Act and denies choices to end users. Staff IB at 236; Staff Ex. 10.0 at 29-30.

Further, Ameritech Illinois' contention that Staff's proposal would require end users to sacrifice convenience when it comes to high-speed Internet access is mistaken. Ameritech IB at 200. On the contrary, Staff's proposal would provide end users with greater choice: end users could elect to obtain DSL transport and Internet Access from separate providers or elect to obtain an integrated Internet Access package from one provider. *See* Staff Ex. 24.0 at 45-46. Ameritech's (through AADS) existing offering denies end users this choice. In point of fact, an end user may find it more "convenient" to purchase DSL transport and Internet access separately, obtaining a lower total monthly charge in exchange for performing additional legwork. *See* Staff Ex. 10.0 at 30-32 (indicating that stand-alone DSL

transport would produce lower prices for DSL than the existing exclusive DSL marketing arrangement).

Next, Ameritech contends that requiring it to provide stand-alone DSL transport is "completely unnecessary" because the market is already competitive. Ameritech IB at 200. Ameritech contends that there is no evidence that requiring it to provide stand-alone DSL transport would make high-speed Internet access more competitive. Id. As Staff explained, however, requiring Ameritech Illinois to offer stand-alone DSL transport will help to exert more competitive pressure on DSL transport providers (as well as other broadband service providers). Staff Ex. 10.0 at 28, 30-33; Staff Ex. 24 at 37-39, 45. Ameritech Illinois has provided no evidence that AADS prices its services at cost or is unable to sustain its prices above cost, two features indicative of a competitive market. Staff Ex. 24.0 at 37-38.

Ameritech Illinois also contends that the Commission must reject Staff's proposal because it is the type of "novel interpretative issue" the FCC refuses to consider in Section 271 proceedings. Ameritech IB at 201 (internal quotation marks omitted). Ameritech Illinois is mistaken. As there currently is no federal requirement that an ILEC provide stand-alone DSL transport, there is no interpretation of federal law needed regarding stand-alone DSL transport. Thus, there is no "novel interpretive issue" for the FCC to decline to consider in a Section 271 proceeding. Rather, the question here is whether it is in the public interest for this Commission to require Ameritech Illinois to offer stand-alone DSL transport to end users. As Staff has amply demonstrated, the answer is yes.

Finally, Ameritech Illinois objects to eliminating its (through AADS) self-imposed bundling practice restricting its DSL transport offering to loops in which Ameritech Illinois provides the voice service. Ameritech IB at 201-02. It argues, in effect, that the Commission should ignore its anti-competitive practice in this proceeding. The Commission should reject that argument and find here that it is in the public interest for Ameritech Illinois to eliminate that practice. Staff demonstrated, in testimony and brief, that Ameritech Illinois' (through AADS) self-imposed bundling practice creates a barrier to competition in the local telephone service market and reduces a subscriber's willingness to switch from Ameritech Illinois' voice service to a CLECs' voice service. Staff IB at 236-37; Staff Ex. 10.0 at 34-35; Staff Ex. 24.0 at 49-53. Ameritech Illinois' bundling practice ties customers' choice of voice service provider to their choice of DSL service provider and impedes CLECs' ability to compete with Ameritech Illinois in the local voice service market. Staff IB at 237. As a result, as Staff demonstrated, it is in the public interest for the Commission to require Ameritech Illinois to eliminate its bundling practice and provide DSL transport in non-line-sharing arrangements.

B. The Public Interest Requires that Ameritech Submit Its New Cost Models to the Commission Prior to Seeking New Rates Based Upon Them

Ameritech objects to the Staff's recommendation that the Commission, as a condition of a favorable recommendation of the company's Section 271 application, require the company to submit its cost models for Commission review prior to using such models as a basis for revisions to UNE rates. Ameritech IB at 199. The

company contends that this requirement would create a cumbersome procedure, and require the company to litigate two dockets to revise UNE rates. Id.

Ameritech's arguments should be rejected. While the Staff has no doubt that the company is constantly updating its models, this does not seem to have improved the models to any significant degree. For example, the Commission has recently rejected the rate structure and cost studies that Ameritech prepared using its ARPSM model. TELRIC 200 Order, ¶¶12-16, 82-90. Likewise, Ameritech withdrew its rate rebalancing proposal in the alternative regulation proceeding, after the Administrative Law Judge recommended in her Proposed Order that the company's LFAM model be rejected. Proposed Order at 70, ICC Docket No. 98-0252/0335; 00-0764 (May 22, 2001); Post-Exceptions Proposed Order at 77 (October 4, 2001). In light of this, it is difficult to determine how the Staff's proposal will result in additional proceedings. Rejecting Ameritech's cost models, as the Commission has been compelled to do, is what results in additional proceedings, since rates must be put in place.

Moreover, as noted, Ameritech's avowed intention of introducing six new models – the effect on costs of which Ameritech's cost witness could not even guess at – is not calculated to ameliorate this problem. Good sense and administrative economy dictate that the Staff's recommendation be approved.

XIV. CONCLUSION

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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Updated Summary of Staff's Proposed Remedial Actions For Ameritech Illinois

The following table presents Staff's updated recommendations to the Commission pursuant to their assessment of Ameritech Illinois' (AI or Company) compliance with the requirements under Sec. 271 based upon the record in this proceeding. Staff asserts that the Commission should not provide a positive consultation to the FCC regarding Ameritech Illinois' Sec. 271 application until the Company has taken the remedial actions set forth in this appendix.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
General	Ameritech Illinois should tariff each and every offering the Company relies upon to support its case that it meets all obligations of Section 271. Every deficiency the Commission finds in Ameritech Illinois' current Sec. 271 application must be rectified through the filing of new tariffs (or revisions to existing tariffs) in Phase 1 of this proceeding. Once this is accomplished, the Commission should examine in Phase 2 each such new tariff filing (or tariff revision) to determine compliance with all applicable requirements.	ICC Staff Ex. 1.0 and 18.0 – Jeff Hoagg; Staff IB at 232-234.
General	The Commission should require Ameritech to modify the GIA and I2A rates, terms, and conditions to comply with all requirements of Section 271. The Commission should require Ameritech to agree to provide the entire GIA and I2A to any requesting carrier, without the need for negotiation or arbitration, in Commission approved form. The Commission should require Ameritech to agree to obtain Commission approval prior to any modification to, or withdrawal of, any rates, terms, or conditions applicable to its Illinois offerings in these two contracts.	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 24-36.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	The Commission should require Ameritech to prove that carriers have been able to obtain Section 271 compliant rates, terms, and conditions by describing explicit rates, terms, and conditions contained in carrier specific interconnection agreements or Ameritech Illinois tariff sections and explaining how these rates, terms, and conditions are compliant with its Section 271 obligations.	
General	Ameritech is not required to provide access to the CNAM database via batch files. Accordingly, no rates exist for this service. If the Commission determines that such access is required as argued by certain CLECs, then the Staff recommends that a proceeding be convened to investigate costs and rates for this service.	Staff IB at 246.
Checklist item 1 (Interconnection)	The Commission should require Ameritech to permit carriers to opt-into, without the need for negotiation or arbitration, reciprocal compensation rates, terms, and conditions, and, therefore, into entire interconnection agreements, particularly when such agreements contain rates, terms, and conditions that this Commission and the FCC require Ameritech to provide.	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 41 – 49.
Checklist item 1 (Interconnection)	As a necessary condition for the Commission to make a favorable Section 271 recommendation to the FCC the Commission should: Require Ameritech to make it known that it does not plan to elect the FCC's reciprocal compensation rate caps or make an immediate election of the FCC's rate caps. Alternatively, the Commission should rule that Ameritech's decision to not offer to exchange all traffic subject to Section 251(b)(5) at the same ISP-bound traffic	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 49-54.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	rates set by the FCC for more than a year following the FCC's ISP-Bound Compensation Order amounts to an election and precludes Ameritech from picking and choosing a different pricing scheme at this time. Alternatively, the Commission should rule that Ameritech's decision to not offer to exchange all traffic subject to Section 251(b)(5) at the same ISP-bound traffic rates set by the FCC for almost 11 months following the FCC's *ISP-Bound Traffic Order* amounts to an election and precludes Ameritech from picking and choosing a different pricing scheme at this time.	
Checklist item 1 (Interconnection)	The Commission should require Ameritech to permit interconnecting carriers to transit third party traffic flowing between Ameritech and the third party carrier.	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 54 - 58.
Checklist item 1 (Interconnection)	Staff recommends, pursuant to the Stipulation and subject to review of compliance with the 01-0614 Compliance Tariff in Phase 2 of this proceeding, that the Commission find that the rates, terms, and conditions, related to Ameritech's point of interconnection arrangement offerings, contained in the compliance tariff the Commission ordered Ameritech to file in Docket No. 01-0614 adequately addresses Staff's concerns regarding this issue.	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek, Staff IB at 58 –66.
Checklist item 1 (Interconnection)	AI's general interconnection agreement (GIA) should be amended to reflect its tariffed collocation rates.	ICC Staff Ex. 5.0 and 22.0 – Mark Hanson; Staff IB at 89-94.
Checklist item 1 (Interconnection)	AI should update its All Equipment List (AEL) either quarterly or as soon as new equipment is added as mandated by the	ICC Staff Ex. 4.0 and 21.0 – Sanjo Omoniyi; Staff IB at 66-89.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	Commission's Order in Docket 99-0615.	
Checklist item 1 (Interconnection)	AI should provide power cable installation to CLECs in a virtual collocation arrangement. Also, the Commission should mandate that if AI intends to change its policy contrary to what is in its tariff, it should file a change of tariff advising the Commission of its intention. This will allow the Commission to investigate and consider such a proposal.	ICC Staff Ex. 4.0 and 21.0– Sanjo Omoniyi; Staff IB at 66-89.
Checklist item 1 (Interconnection)	In accordance with, and subject to, the terms and conditions of the Stipulation, the issues Staff raised pertaining to Section 13-801(c) collocation issues regarding cross-connections and allowable equipment have been addressed adequately in ICC Docket No. 01-0614 and in the 01-0614 Compliance Tariff, and need not be addressed again in this docket except as provided in the Stipulation. Staff takes no position on collocation issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs. Therefore, Staff recommends that with respect to these issues, the Commission should direct AI to comply with its 01-0614 Compliance Tariff and the Order in Docket 01-0614, and direct that such compliance be monitored and confirmed during Phase II of this proceeding.	ICC Staff Ex. 4.0 and 21.0– Sanjo Omoniyi; Staff IB at 66-89; Staff and AI Stipulation at 2.
Checklist item 2 (UNE Access)	In order for the Commission to recommend to the FCC that Ameritech's Section 271 be approved, Staff continues to recommend that: • Ameritech demonstrate that its UNE offerings are reasonably available, that Ameritech prove that its UNE rates are clearly defined and can be	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 109-110 and 113-114

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	considered reasonably within a range of TELRIC compliance • Ameritech demonstrate that it makes its Sec. 271 compliant rates, terms, and conditions available to all carriers in Illinois	
Checklist item 2 (UNE Access)	In order for the Commission to recommend to the FCC that Ameritech's Section 271 be approved, Staff continues to recommend that, in order to prove that its UNE offerings are reasonably available: • Ameritech must demonstrate that its UNE combination rates are clearly defined and reasonably within a range of TELRIC compliance. • Ameritech must prove that it has well defined, concrete, and binding terms and conditions that define provisioning intervals for UNE combinations, in particular loop/transport combinations, both those provided as pre-existing and new combinations. • Ameritech must prove that it has well defined, concrete, and binding terms and conditions that define the quality at which Ameritech will provide UNE combinations, in particular loop/transport combinations, both those provided as pre-existing and new combinations.	ICC Staff Ex. 3.0 and 20 – Dr. Jim Zolnierek; Staff IB at 116 – 119.
Checklist item 2 (UNE Access)	Ameritech Illinois should do the following to correct its short comings with Line Loss Notifications:	ICC Staff Ex. 11.0 and 25.0 – Nancy Weber; Staff IB at 122 – 138.

[22] Accessible letters are the primary vehicles by which Ameritech communicates to its wholesale customers. They are usually electronic documents sent by Ameritech via email.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	Correct the loss notification issues that SBC/Ameritech acknowledges exist, in MI Case No. U-12320, with partial migration of accounts. Re-train Ameritech Illinois personnel to prevent loss notification problems arising from manual handling errors in the local service centers. Determine if other situations exists that cause loss notifications to be inaccurate, or untimely, and correct those situations immediately. Clearly state all problems Ameritech Illinois has uncovered related to loss notifications since January 2001 and communicate these situations in an Accessible Letter[22] to the entire CLEC community. The Accessible Letter should also indicate when the problem was first identified, what versions of Ameritech's software the problem is applicable to, what action Ameritech Illinois has taken if any to correct each issue and when the action was taken, as well as any planned or future action Ameritech Illinois plans to take and an estimate of when the actions will be taken. On a CLEC-by-CLEC basis, Ameritech Illinois should determine the accounts for which loss notifications have never been sent or were sent incorrectly and communicate these instances to the affected CLECs. If problems continue to persist then Ameritech Illinois should be required to perform this reconciliation process on a monthly basis until all issues have been resolved. Continue to meet with CLECs, on an as	

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	needed basis, to discuss the problems associated with loss notifications and the actions Ameritech Illinois is taking to address the issues. Modify the process Ameritech Illinois uses to notify its retail organization of a customer loss or the process Ameritech Illinois uses to notify its wholesale carriers of a customer loss to bring them into parity with one another. <u>Changes to Performance Measurement MI 13.</u> AI should modify the calculation, business rules and exclusions associated with performance measure MI 13 to accurately capture how long it takes Ameritech Illinois to send a loss notification, and to reflect the fact that MI 13 does not include loss notifications that are never sent. The modifications are as follows: • The calculation should be modified so that the clock starts when the work to disconnect the account from the losing carrier was completed as opposed to the date the service order completion notice was sent to the new carrier. • The business rule should be modified to the following: "The percentage of customer loss notifications sent to carriers where the elapsed time from the completion of the disconnect provisioning work to the time the loss notification (EDI 836 message) is transmitted to the losing carrier is less than one hour". • An additional exclusion should be added to the business rule document to clearly delineate that	

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	loss notifications that are not sent by Ameritech Illinois are not included in the measure. • If the time interval is moved to 24 hours (or one calendar day) from one hour as proposed by AI then the benchmark for MI 13 should be increased from 95% to 97%. • Include performance measure MI 13 in the Ameritech Illinois Performance Remedy Plan or whatever plan is determined to be its "Anti-backsliding Plan" as part of this 271 proceeding. A medium weighting should be tied to the measure for remedy purposes. Today, no remedy payments are tied to performance measure MI 13. Any changes Ameritech Illinois makes to its current processes and procedures regarding loss notifications or its performance measures that track loss notifications should be subject to review in Phase 2 of this proceeding. Ameritech's cross-functional team should remain in place and continue to review the line loss notifications until AI provides six months of line loss notices without uncovering any new problems and without any of the old problems re-emerging.	
Checklist item 2 (UNE Access)	Based on AI's own admission it does not intend to comply with Commission orders in Dockets 86-0278 and 94-0431, and its non-compliance has adverse impacts on opening the market to competition. The Commission should find AI's failure to comply with Commission order will inhibit a CLEC's ability to access NIDs in a manner consistent with the FCC's requirements.	Staff IB at 119-122.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
Checklist item 2 (UNE Access)	The Commission should order the opening of an investigation that would accomplish the following: 1) Determine whether Ameritech's rates for Unbundled Sub-Loops, Dark Fiber, Access to the AIN Database, and Access to CNAM Database are in compliance with TELRIC principles and consistent with the Order in Docket 96-0486/0539 (Consolidated); and (2) Investigate the impact of the LFAM model on the costs and rates for the services in these filings, and determine whether LFAM is acceptable to develop TELRIC costs.	ICC Staff Ex. 23.0 – Bob Koch; Staff IB at 143-151.
Checklist item 4 (Unbundled Local Loops)	Ameritech Illinois must file tariff language providing CLECs access to unbundled sub-loops at any technically feasible point. Ameritech Illinois must employ a single order process for migration of voice and data to competitive carriers.	ICC Staff Ex. 1.0 and 18.0 – Jeff Hoagg; Staff IB at 154-157.
Checklist item 4 (Unbundled Local Loops)	Ameritech Illinois is in compliance with state law, but should submit a tariff with language pertaining to the aforementioned issue revised to comply with the Commission's [Section 13-801 Order] (and Commission's approval of that tariff)." .	Stipulation at 3; Staff RB at 73
Checklist item 5 (Unbundled Local Transport)	Ameritech Illinois has filed with the Commission a permanent shared transport tariff pursuant to Commission Order in Docket 00 –0700. However, this tariff is not yet in effect, and this tariff has not yet been shown to comply with the Commission's Order. Until it is established that Ameritech's permanent shared transport tariff fully complies with federal and state requirements, and such tariff is in effect, the Commission should	ICC Staff Ex. 1.0 and 18.0 – Jeff Hoagg; Staff IB at 158-160.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	decline to endorse an Ameritech Illinois Section 271 application. Specifically, Ameritech Illinois must demonstrate that it has in effect a permanent ULS-ST tariff with an acceptable transiting functionality. Ameritech Illinois must also demonstrate that its permanent shared transport tariff provides for AIN-based custom routing to alternative OS/DA platforms of a CLEC's choice.	
Checklist item 6 (Unbundled Switching)	Staff recommends that the Commission find that Ameritech must demonstrate in Phase 2 of this proceeding that it has fully implemented and complied with the TELRIC 2000 Order before the Commission can give a positive recommendation to the FCC with respect to Ameritech's obligation to provision unbundled local switching at TELRIC compliant rates and prove that its unbundled local switching offering is reasonably available.	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 160-164.
Checklist item 6 (Unbundled Switching)	In accordance with, and subject to, the terms and conditions of the Stipulation, the issues Staff raised pertaining to the Secure Feature Issue have been addressed adequately pursuant to the Stipulation and Ameritech's agreement to amend its BFR tariff, and need not be addressed again in this docket subject to confirmation of compliance in Phase 2 as provided in the Stipulation. Staff takes no position on ULS issues raised by other parties to this docket based on the evidence adduced and arguments contained in the initial briefs.	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 160-164.
Checklist item 10 (Databases and Associated Signaling)	Staff recommends that the Commission condition its favorable recommendation to the FCC on AI making a commitment to resolve the issue raised by RCN pertaining	ICC Staff Ex. 16.0 at 7-12; Staff IB at 173-175.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	to transmission of a calling party's CNAM information. Consequently, the Commission should order this issue to be addressed in Phase 2. This will allow AI to either provide evidence that it has resolved this problem, or to allow the CLECs and AI to propose to the Commission a timeline, or plan, by which this problem can be resolved.	
Checklist item 13 (Reciprocal Compensation)	The Commission, prior to giving Ameritech a positive Section 271 recommendation to the FCC, should require Ameritech to take the following steps: Because the evidence suggests that Ameritech's tariffed rates no longer appropriately reflect its costs, the Commission should require Ameritech to update its tariffed reciprocal compensation rates and obtain Commission approval of updated reciprocal compensation cost studies that support these rates. Alternatively, the Commission should require Ameritech to submit state-to-state reciprocal compensation rate comparisons and any other evidence to demonstrate that their reciprocal compensation rates are in the range that can be considered by any reasonable standard within the range of TELRIC compliance.	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 186-212.
Checklist item 13 (Reciprocal Compensation)	The Commission, prior to giving Ameritech a positive Section 271 recommendation to the FCC, should require Ameritech to take the following steps: The Commission should require Ameritech to permit carriers to opt-into, without the need for negotiation or arbitration, reciprocal compensation rates, terms, and conditions for reciprocal compensation of traffic subject to Section 251(b)(5) of the 1996 Act in existing interconnection	ICC Staff Ex. 3.0 and 20.0 – Dr. Jim Zolnierek; Staff IB at 186-212.

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	agreements between Ameritech and CLECs.	
Checklist Items 2, 4, 7, 10 (Pricing)	AI must file TELRIC compliant rates or demonstrate that the interim rates for the following are compliant with TELRIC principles: non-recurring charges for UNE combinations; non-recurring charges for UNEs; recurring UNE charges; unbundled switching and interim shared transport rates (ULS-IST); dark fiber; unbundled sub-loop rates; AIN routing of OS/DA charge; CNAM database access charge; NGDLC UNE platform charge; and OSS modification charge for the HFPL UNE. AI must allow all current proceedings for UNE rates to become effective without applying for rehearing. These cases include Docket 98-0396, Docket 00-0393, Docket 00-0700, and Docket 01-0614. AI should agree to cap existing UNE rates for five years. AI agrees to not introduce new or modified cost models for the development of UNE rates, for new or existing elements, until it receives prior approval from the Commission.	ICC Staff Ex. 6.0 and 23.0 – Bob Koch; Staff IB at 237-246.
Public Interest	Ameritech Illinois should offer retail DSL to the end-user on a stand-alone basis. Ameritech Illinois should provide DSL transport regardless of which carrier provides the voice service. That is, it should remove its self-imposed bundling requirement.	ICC Staff Ex. 10.0 and 24.0 – Dr. Qin Liu; Staff IB at 234-237.
Public Interest	Based on Ameritech's history of non-compliance with the Illinois PUA , ICC Orders and FCC Orders, the Commission	ICC Staff Ex. 2.0 and 19.0 – Jonathan Feipel;

SECTION 271 REQUIREMENT	PROPOSED REMEDIAL ACTIONS	REFERENCE
	should require the Company to rectify this situation by implementing Staff's remedial actions prior to granting a positive 271 recommendation. Furthermore, to ensure future compliance the Commission needs to send a clear message that it will utilize the following enforcement tools at its disposal whenever necessary: • Conduct management audits pursuant to §8-102, • Conduct tariff investigations pursuant to §9-250, • Order refunds pursuant to §9-252, • Seek mandamus or injunction pursuant to §13-303, • Impose fines for general violations pursuant to §13-305, • Impose tariffs pursuant to §13-501(b), • Impose penalties for inter-carrier complaints pursuant to §13-516. The ICC must establish a comprehensive performance measurement plan coupled with appropriate and meaningful remedies in order to prevent backsliding and ensure competitiveness in the Illinois local telecommunications marketplace.	Staff IB at 215-234.